

1
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 -----x
5 TRIARCH ARCHITECTURAL SERVICES, P.C.,

6 Plaintiff,

7
8 -against-

11-CV-2708 (AKH)

9
10 MEDALLION INC., VLADIMIR VORONCHENKO
11 and GARTH HAYDEN ARCHITECT,

12 Defendants.

13 -----x
14 May 10, 2012

15 9:14 a.m.

16
17 Deposition of MICHAELA DEISS, taken by
18 the Defendants, pursuant to Notice, at the
19 offices of Gogick Byrne & O'Neill LLP, 11
20 Broadway, New York, New York, before David
21 Levy, CSR, RPR, a Notary Public of the State
22 of New York.

1
2 APPEARANCES:
3
4 MANDEL BHANDARI LLP
5 Attorneys for Plaintiff
6 11 Broadway, Suite 615
7 New York, New York 10004
8 BY: EVAN MANDEL, ESQ.
9
10
11 SAM P. ISRAEL, P.C.
12 Attorney for Defendants Medallion, Inc., and
13 Vladimir Voronchenko
14 1 Liberty Plaza, 23rd Floor
15 New York, New York 10006
16 BY: SAM P. ISRAEL, ESQ.
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1
2 MICHAELA DEISS, having been duly
3 sworn by the Notary Public, was examined and
4 testified as follows:
5 EXAMINATION BY
6 MR. McKEE:
7 Q. Ms. Deiss, my name is Wesley McKee.
8 I'm with the firm of Gogick Byrne & O'Neill. We
9 represent one of the defendants in this litigation
10 brought by Triarch Architectural Services in the
11 Southern District, before the United States
12 District Court. I represent Garth Hayden
13 Architect. Have you ever had your deposition
14 taken before?
15 A. No.
16 Q. So this is your first time doing this
17 no?
18 A. Um-hum.
19 Q. I'm going to give you some
20 instructions. Do you understand that a deposition
21 is where I ask you a series of questions, and you
22 provide answers to those questions?
23 A. Yes, I do.
24 Q. And do you understand you've been
25 placed under oath?

1
2 APPEARANCES (Cont'd):
3
4 GOGICK BYRNE & O'NEILL LLP
5 Attorneys for Defendant Garth Hayden
6 Architect
7 11 Broadway, Suite 1560
8 New York, New York 10004
9 BY: ALBERT WESLEY McKEE, III, ESQ.
10
11
12 ALSO PRESENT:
13 ELEONORA ZLOTNIKOVA
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1 Deiss
2 A. Yes.
3 Q. You understand that there's a
4 stenographer here, Mr. David Levy, who is taking
5 down my questions and your answers?
6 A. Yes.
7 Q. Mr. Levy will give us a booklet when
8 we're done, which will have all of my questions
9 and all of your answers, and that booklet will
10 preserve your testimony here as if it were in
11 court; do you understand that?
12 A. Um-hum, I do.
13 Q. So everything you say here is just the
14 same as if you were sitting in front of a jury and
15 a judge, do you understand that?
16 A. I do.
17 Q. Great. If at any point you don't
18 understand my question, please let me know you
19 don't understand it, and I'll rephrase it for you,
20 okay?
21 A. Yes.
22 Q. I'm asking you for what you know, not
23 for you to guess, okay?
24 A. Yeah.
25 Q. If you don't know, you can say you

1 Deiss
2 don't know, all right?
3 A. All right.
4 Q. If, however, because there's been some
5 passage of time since the underlying events have
6 occurred, you have a general recollection, space,
7 distance, time, value, anything like that, and
8 you're giving me an estimation based upon your
9 best recollection, you can do that. Just let us
10 know that's what it is, okay?
11 A. Yes.
12 Q. If your attorney, in particular, but
13 also if counsel for the other defendants seated to
14 my left raises any objection to my questions,
15 please allow the attorneys to discuss the
16 objection before we proceed, okay?
17 A. Sure.
18 Q. Finally, if at any point you feel you
19 need a break, just let me know and we will take a
20 break. The only caveat to that is that if I've
21 asked you a question, you have to give me the
22 answer before we take the break.
23 A. Okay.
24 Q. Okay? Oh, and most important, and
25 this is for Mr. Levy's benefit particularly, you

1 Deiss
2 A. Yes, I am.
3 Q. Who are the other directors of
4 Triarch?
5 A. There's a president and that is
6 Stephen Corelli.
7 Q. C-o-r-e-l-l-i?
8 A. C-o-r-e-l-l-i.
9 Q. And his official title is president?
10 A. Yes.
11 Q. Are there any other directors?
12 A. No.
13 Q. So it's just you and Mr. Corelli?
14 A. Yes.
15 Q. Do you have a title other than
16 director?
17 A. No.
18 Q. Vice-president, anything like that?
19 A. No.
20 Q. How long have you been a director of
21 Triarch?
22 A. Since we started the corporation.
23 Q. The PC?
24 A. Yes.
25 Q. And when was that?

1 Deiss
2 will probably know what my question is before I
3 finish it. What I'd ask you to do is pause and
4 wait for me to complete my question before you
5 start speaking, okay?
6 A. Yes.
7 Q. Otherwise Mr. Levy will be strained to
8 keep my questions and your answers separate,
9 understand?
10 A. I do.
11 Q. Thank you. By whom are you employed?
12 A. By Triarch.
13 Q. Triarch Architectural Services?
14 A. Yes.
15 Q. And what is your position at Triarch?
16 A. I'm a director.
17 Q. What do you mean by "a director"?
18 A. I don't understand your question.
19 What do you mean?
20 Q. Well, "Director" is a title?
21 A. It's a title, yes.
22 Q. What does it mean?
23 A. It means that I'm directing the
24 operations of Triarch.
25 Q. Are you an owner in Triarch?

1 Deiss
2 A. In the '90s. I don't remember exactly
3 what date.
4 Q. Do you recall what year?
5 A. I don't.
6 Q. Latter half of the '90s, first half of
7 the '90s?
8 A. I think it was the first half. I'm
9 not sure.
10 Q. Since 2007, have there been any
11 changes in the composition of the ownership or
12 directors of Triarch?
13 A. No.
14 Q. So in 2007, you and Mr. Corelli were
15 the only two directors?
16 MR. MANDEL: Objection
17 mischaracterizes prior testimony.
18 Q. Do you understand my question? In
19 2007, were you and Mr. Corelli the only two
20 directors for Triarch?
21 A. Yes.
22 Q. Okay. And that's remained constant to
23 the present?
24 A. Yes.
25 Q. Thank you. What's your educational

1 Deiss
 2 background?
 3 A. Um -- I went to school in Geneva for
 4 interior architecture. And I went to school --
 5 and I have a degree. And I went to school at
 6 Parsons in New York for interior design.
 7 And before that, I went to University
 8 of Lausanne and studied psychology for two years.
 9 Q. What year did you receive your degree
 10 in interior architecture?
 11 A. I don't remember. It was --
 12 Q. How about a decade, do you remember
 13 the decade?
 14 A. In the '70s.
 15 Q. Okay. When did you get your degree in
 16 interior design from Parsons?
 17 A. '80 -- '83, '84.
 18 Q. Thank you. What's the distinction
 19 between interior architecture and interior design,
 20 if any?
 21 A. Interior architecture is more to do
 22 with interior construction. Interior design is
 23 similar to that but also deals with decorating.
 24 Q. When you say "construction," what do
 25 you mean?

1 Deiss
 2 A. I don't understand your question. I
 3 think it's self-explanatory. Construction, I mean
 4 providing construction documents.
 5 Q. So the preparation of construction
 6 documents?
 7 A. Yes.
 8 Q. And by that you would mean a
 9 construction set of drawings such as you brought
 10 with you today?
 11 A. Yes.
 12 Q. And that's a distinction from interior
 13 design, which trends towards decoration?
 14 A. Yes, it is.
 15 Q. And by "decoration," you would mean
 16 what?
 17 A. Wall treatments, floor treatments,
 18 furniture, lighting, decorative aspects of the
 19 space.
 20 Q. Do you hold any licenses or
 21 designations?
 22 A. No.
 23 Q. Are you registered?
 24 A. No.
 25 Q. Have you ever been an RA?

1 Deiss
 2 A. No.
 3 Q. Do you know what an RA is?
 4 A. Registered Architect.
 5 Q. Yes.
 6 A. No.
 7 Q. Are you subject to any discipline by
 8 any state licensing agency?
 9 A. None.
 10 Q. Have you ever been?
 11 A. No.
 12 Q. Have you ever heard of an individual by
 13 the name of Vladimir Voronchenko?
 14 A. Yes, I have.
 15 Q. How did you first come to be
 16 introduced to Mr. Voronchenko?
 17 A. We had a meeting with Mr. Voronchenko.
 18 He met my partner, Stephen Corelli, and wanted to
 19 hire us to work on his apartment.
 20 Q. Do you recall when that was?
 21 A. In September of 2008.
 22 Q. Where did that meeting take place?
 23 A. Either -- I don't remember the first
 24 meeting. It was either in his -- in
 25 Mr. Voronchenko's apartment or in our office.

1 Deiss
 2 Q. Did you have more than one meeting
 3 with Voronchenko?
 4 A. Yes.
 5 Q. Was there more than one meeting which
 6 occurred with Voronchenko at the apartment?
 7 A. Yes.
 8 Q. Was there more than one meeting that
 9 occurred with Voronchenko at your offices?
 10 A. Yes.
 11 Q. Back in September of 2008, where were
 12 your offices located?
 13 A. 42 North Moore Street.
 14 Q. Thank you. I'm not familiar with that
 15 location. Is that here in Manhattan?
 16 A. In TriBeCa, yes.
 17 Q. Thank you. Is it still at that
 18 location?
 19 A. Oh, no. It has changed.
 20 Q. Where are you located now?
 21 A. We're still in the same location. Oh,
 22 you mean -- I'm sorry. I understood if it's still
 23 a bad location. Sorry.
 24 Q. I wouldn't make such a judgmental
 25 statement or question. You are still located at

1 Deiss
 2 the same address?
 3 A. Yes, we are.
 4 Q. Okay. The first meeting you had with
 5 Mr. Voronchenko, whether it was at your offices or
 6 at the apartment, who else, if anyone other than
 7 Voronchenko, your partner, and yourself were in
 8 attendance?
 9 A. Garry Braverman.
 10 Q. Anybody else?
 11 A. Not that I remember.
 12 Q. Who arranged that meeting, if you
 13 recall?
 14 A. Mr. Corelli and Mr. Braverman.
 15 Q. Had you ever done any work, you
 16 personally, with Mr. Voronchenko prior to that
 17 September 2008 meeting?
 18 A. No.
 19 Q. Had you ever heard of Mr. Voronchenko
 20 prior to that meeting?
 21 A. No. Oh, well, I had heard about him
 22 from my partner. But --
 23 Q. In anticipation -- I'm sorry. In
 24 anticipation of the meeting, you would have heard
 25 about Voronchenko.

1 Deiss
 2 A. Yes.
 3 MR. MANDEL: It's very helpful to the
 4 court reporter if you just let him finish
 5 his question --
 6 THE WITNESS: Sorry.
 7 MR. MANDEL: -- before you jump in. I
 8 should have pointed that out earlier.
 9 THE WITNESS: No, they said that but I
 10 forgot.
 11 MR. McKEE: You're doing fine.
 12 Q. So prior to Mr. Corelli telling you
 13 about an upcoming meeting with this individual
 14 named Voronchenko, you'd never heard of him.
 15 A. No.
 16 Q. Knew nothing of his reputation?
 17 A. Nothing.
 18 Q. If he has one. Knew nothing of his
 19 businesses? Okay. There's an entity that's been
 20 sued in this litigation called Medallion, Inc.
 21 A. Yes.
 22 Q. Ever hear of Medallion, Inc.?
 23 A. Yes.
 24 Q. What's your understanding of what
 25 Medallion, Inc. is?

1 Deiss
 2 A. It's a corporation that holds, I think
 3 that holds the ownership of the apartment.
 4 Q. Prior to the meeting in September
 5 2008, had you ever heard of Medallion before?
 6 A. No.
 7 Q. Is Mr. Braverman, to your
 8 understanding, associated with Medallion?
 9 A. Yes, he is.
 10 Q. Do you understand him to be a
 11 principal in Medallion?
 12 A. I don't know.
 13 Q. Okay. Do you know what his position
 14 at Medallion is?
 15 A. I don't know.
 16 Q. Had you ever met Mr. Braverman prior
 17 to that September 2008 meeting?
 18 A. No, I hadn't.
 19 Q. Okay. So these were all new faces
 20 regarding an entirely new project for you,
 21 correct?
 22 A. Yes.
 23 Q. And nobody else from Triarch
 24 Architectural Services attended that meeting,
 25 correct?

1 Deiss
 2 A. Stephen Corelli did.
 3 Q. Other than Mr. Corelli. My mistake.
 4 Anybody else?
 5 A. No.
 6 Q. Thank you. Regardless of where that
 7 meeting took place, whether it was at the
 8 apartment or at your offices, what, if anything,
 9 were you given by your clients, or prospective
 10 clients, I should say, what were you given?
 11 A. I don't remember.
 12 Q. Were you given anything? Putting
 13 aside whether you remember -- I'll rephrase the
 14 question. My original question was, what, if
 15 anything, were you given at the meeting. I
 16 believe you said you don't remember.
 17 A. I don't remember exactly, no.
 18 Q. Were you given anything, irrespective
 19 of what it may have been, were you given anything
 20 tangible, any kind of document or anything?
 21 A. I don't think at the meeting.
 22 Q. Now, going back to what I think you
 23 started to say, prior to the meeting, were you
 24 provided with anything?
 25 A. I don't remember.

1 Deiss
 2 Q. You don't remember whether you were
 3 provided with anything at all, or you don't
 4 remember what you were provided with?
 5 A. I don't remember that we were provided
 6 with anything at all --
 7 Q. Okay.
 8 A. -- at the meeting or prior to the
 9 meeting.
 10 Q. Okay. What, if anything, were you
 11 told at that initial meeting by either Voronchenko
 12 or Braverman about the apartment?
 13 A. That he wanted to renovate the
 14 apartment in a substantial way, and give it more
 15 character.
 16 Q. What else did he tell you about what
 17 they wanted for their project?
 18 A. They wanted it to look, to have an Art
 19 Deco look.
 20 Q. Who did most of the talking at this
 21 meeting, Braverman or Voronchenko?
 22 A. I don't remember.
 23 Q. My understanding is, Mr. Voronchenko
 24 originally hails from Russia, is that correct,
 25 from your understanding?

1 Deiss
 2 A. That's my understanding, too.
 3 Q. How was his English, was he
 4 understandable to you?
 5 A. Yes. His English is good.
 6 Q. You had no trouble understanding
 7 anything he said?
 8 A. No.
 9 Q. What, if anything, did Voronchenko or
 10 Braverman tell you about any previous work or
 11 design that they had had done for them, as it
 12 relates to that apartment?
 13 A. He showed us images and plans that had
 14 been prepared by other architects or designers.
 15 Q. Yes. Let's start with the first.
 16 What do you mean by "images"?
 17 A. Renderings.
 18 Q. What do you mean by "rendering"?
 19 A. Three-dimensional architectural
 20 drawings.
 21 Q. Computer-generated?
 22 A. Computer-generated.
 23 Q. What, if anything, can you recall
 24 about any of the details of those 3-D
 25 computer-generated images you were shown?

1 Deiss
 2 A. They were very bad.
 3 Q. Okay. So you felt they were of poor
 4 quality.
 5 A. Extremely poor quality.
 6 Q. Crude?
 7 A. I don't want to say that about another
 8 architect's work. But --
 9 Q. I mean, "Crude" as in primitive, not
 10 vulgar --
 11 A. Pretty crude.
 12 Q. So less than a fully-formed idea,
 13 would you say?
 14 A. Yes.
 15 Q. Who is the author or authors of these
 16 crude or primitive 3-D computer-generated images?
 17 A. I don't know. There was some Russian
 18 writing on it, but I don't speak Russian.
 19 Q. So it had Cyrillic letters?
 20 A. Some of them had some Cyrillic
 21 letters.
 22 Q. Yes. And to the extent you can
 23 remember, what were they 3-D images of? What did
 24 they show?
 25 A. The interior of the apartment, I

1 Deiss
 2 guess. It -- actually, I don't know if it was the
 3 interior of that apartment. They showed some
 4 interiors with a lot of wood, Palisander wood cut
 5 in a certain way.
 6 Q. And these were photographs or
 7 computer-generated images?
 8 A. Computer-generated images.
 9 Q. And did Mr. Voronchenko tell that you
 10 he was looking to incorporate something like that?
 11 A. No, he did not.
 12 Q. Did he tell you anything about these
 13 images he was showing you?
 14 A. No, he did not.
 15 Q. Just --
 16 A. He just showed us these images.
 17 Q. And -- I'm just trying to understand.
 18 So he gave you some computer-generated images --
 19 A. He showed us some work that had been
 20 done, that's all.
 21 Q. As it relates to that apartment?
 22 A. I don't know. He -- I have to guess.
 23 Q. Okay.
 24 A. It could have been anywhere. It was
 25 computer-generated images of interiors.

1 Deiss
 2 Q. Yes. And in connection with that, did
 3 either he or Braverman, since they were giving you
 4 this material, did they tell you that this was
 5 something, a look that they wanted or something
 6 that they hated, or something to avoid, did
 7 they --
 8 A. I don't remember. I don't remember,
 9 really.
 10 Q. And they never gave you any indication
 11 as to why they were giving you these pictures,
 12 they just put them in front of you?
 13 A. Well, I have to make an assumption.
 14 Q. Okay.
 15 A. Since they were going to hire another
 16 architect, I imagine they were not pleased with
 17 what they were getting.
 18 Q. Okay. But did they say that, "This is
 19 what the other architect gave us and we are not
 20 pleased with these depictions"?
 21 A. I don't remember. It was four years
 22 ago. I mean, I don't remember.
 23 Q. In preparation for today's deposition,
 24 did you review any documents?
 25 A. Some.

1 Deiss
 2 Q. Did you go back through your project
 3 file?
 4 A. No, I didn't.
 5 Q. Did you review -- you and your
 6 attorney presented with a roll of drawings. Did
 7 you review those drawings before coming here
 8 today?
 9 A. No, I know them by heart, pretty much.
 10 Q. And I was -- I'll represent to you
 11 that your predecessor counsel on this case
 12 provided a volume of documents which appear to
 13 have come out of binders.
 14 A. Yes.
 15 Q. They look like e-mails, photos,
 16 computer-generated drawings.
 17 Did you maintain -- you, Triarch --
 18 maintain binders with such materials on this
 19 project?
 20 A. We have project binders. Those
 21 binders have been compiled mostly after we
 22 finished the project.
 23 Q. And when you say after you finished
 24 the project, was Triarch terminated by
 25 Voronchenko?

1 Deiss
 2 A. Yes.
 3 Q. So those binders were put together
 4 after Voronchenko terminated the relationship?
 5 A. Yes.
 6 Q. So they were not necessarily created
 7 contemporaneous with the work you were doing.
 8 A. No.
 9 Q. When those binders were put together,
 10 were any materials excluded, thrown away,
 11 discarded?
 12 A. Not that I know. We were trying to be
 13 very thorough because we wanted to have a record
 14 of what the whole process had been.
 15 Q. Yes. Did Triarch, back in 2009, say,
 16 February 2009, did it have any materials related
 17 to this project maintained on its computer system?
 18 A. Yes.
 19 Q. Does it still maintain any information
 20 related to this project on its computer system?
 21 A. Yes.
 22 Q. And what is on the computer system
 23 that's related to this project?
 24 A. We have e-mails, we have -- I guess --
 25 we have substantial e-mail correspondence. We

1 Deiss
 2 have the drawings. We have drawing revisions, we
 3 have the renderings, we have the correspondence
 4 for the renderings, the correction of the
 5 renderings, the generation of the renderings.
 6 We have still most of the material in
 7 our computer.
 8 Q. Did you ever do a dump of the entirety
 9 of whatever is on your computer onto a disc or
 10 discs and turn them over to your counsel?
 11 A. I don't know. I don't think so. Can
 12 be done at the present time.
 13 Q. Since this litigation began, has any
 14 material been deleted or removed from your
 15 computer system?
 16 A. No. Maybe some of the e-mail
 17 correspondence is not necessarily there. Mine is
 18 still there, I'm sure. But some of the people
 19 working in the office may not have kept it.
 20 Q. Was it the -- was there any kind of
 21 policy or practice back in the 2008-2009 time
 22 frame for Triarch to, for employees to maintain
 23 copies of all e-mail correspondence generated on a
 24 project?
 25 A. No, we don't have a policy for that.

1 Deiss

2 Q. And as of today, you still don't have
3 a written policy?

4 A. No.

5 Q. To your understanding or knowledge,
6 did any employees who may have been involved in
7 this project in 2008 and 2009, have they left your
8 employ?

9 A. Yes, they have.

10 Q. Okay. And what happened to any of
11 their computer-generated information?

12 A. We have a central server that collects
13 all of the information.

14 Q. And to your --

15 A. All the drawings are on our server.

16 Q. What about any e-mails or
17 transmittals, would they still be maintained or
18 were any of them deleted?

19 A. Since we don't have a policy, I can't
20 answer you. I don't know.

21 Q. Ah. This isn't about policy of what
22 it should or shouldn't be done. I'm asking you
23 whether you know whether --

24 A. I don't know. I have not checked.

25 MR. MANDEL: Let him finish the

1 Deiss

2 Q. Yes.

3 A. We do not have an in-house IT person.

4 Q. Is Henry Mui a consultant?

5 A. Yes, he is.

6 Q. So he comes in as needed?

7 A. He comes in as needed.

8 MR. MANDEL: Mr. McKee doesn't want
9 you to ask him questions, that's just fine.

10 But if you don't understand a question,
11 since he won't let you ask questions, you
12 should just say, "I don't understand the
13 question."

14 THE WITNESS: Okay.

15 MR. McKEE: That's fine.

16 Q. Now, you also mentioned that you were
17 also provided with plans that were prepared by
18 other architects or designers.

19 A. Yes.

20 Q. And describe these plans that you were
21 provided with.

22 A. At some point in the beginning, we
23 received two eight-and-a-half-by-eleven copies of
24 the floor plans.

25 MR. ISRAEL: What was that? I can't

1 Deiss

2 question.

3 Q. So as to any former employees, you
4 have not made a check to see whether their
5 computer-stored e-mails, transmittals, anything
6 like that, is still being stored, still on your
7 server?

8 A. No, I have not.

9 Q. Okay. Do you have an in-house IT
10 person who is responsible for gathering such data
11 if it's requested?

12 A. I have an in-house IT person. But we
13 have not charged him ever to gather information
14 from the computers.

15 Q. What is the name of your in-house IT
16 person?

17 A. Henry Mui. I have a question. What
18 do you mean by "in-house"?

19 Q. Generally, during the course of the
20 deposition, the witness does not ask questions.
21 However, I will -- your question is a good one.
22 So by "in-house," I mean somebody who is a regular
23 employee of Triarch who's there on a daily or
24 almost daily basis.

25 A. I have to change my answer.

1 Deiss

2 hear you.

3 THE WITNESS: At some point in the
4 beginning of our work, I don't remember the
5 date, we received two copies of an
6 eight-and-a-half-by-eleven drawing of the
7 floor plans.

8 MR. ISRAEL: Okay.

9 Q. When you say two copies, you're
10 talking two single sheets?

11 A. Two single sheets.

12 Q. And by eight-and-a-half, a copy of a
13 floor plan, we don't need to mark it right now,
14 but Mr. Israel, who represents the other defendant
15 in this matter, gave us some documents today. And
16 there's a small pile sitting in front of your
17 counsel with the name Libracon. Would that be the
18 type of document you're talking about?

19 A. No.

20 Q. Nothing like that?

21 MR. MANDEL: So the record is clear,
22 Mr. McKee is referring to documents that
23 have been Bates-stamped MED91 through
24 MED102.

25 Q. Okay. So what do you mean by an

1 Deiss
 2 eight-and-a-half-by-eleven copy of a floor plan?
 3 A. It was a drawing -- well, it was a --
 4 it was a floor plan like that, but it didn't have
 5 a title sheet, it wasn't a part of a drawing set
 6 or anything.
 7 Q. I see. So it was literally just the
 8 schematic of the floor itself.
 9 A. Yes. No dimensions, nothing.
 10 Q. And what did it show? Did it show
 11 existing conditions?
 12 A. Existing conditions. One showed an
 13 existing condition.
 14 Q. Yes. What did the other show?
 15 A. It showed a proposed condition.
 16 Q. Were you told who the author was?
 17 A. It said on the plan. Garth Hayden.
 18 Q. It said Garth Hayden. Did you ask who
 19 Garth Hayden was when you received these?
 20 A. No, I did not.
 21 Q. Prior to receiving these two
 22 eight-and-a-half-by-eleven floor plans with the
 23 name Garth Hayden on it, had his name been
 24 mentioned?
 25 A. Yes.

1 Deiss
 2 Q. By whom?
 3 A. By Mr. Voronchenko or Mr. Braverman.
 4 I don't remember who said that.
 5 Q. And did they mention Garth Hayden
 6 during the first meeting you had?
 7 A. I don't remember.
 8 Q. How long into your relationship, "You"
 9 meaning Triarch, with Mr. Voronchenko and
 10 Medallion did the name Garth Hayden come up?
 11 A. Pretty much in the beginning.
 12 Q. And what were you told about Garth
 13 Hayden?
 14 A. That he was the filing architect for
 15 the apartment.
 16 Q. What does that mean, or what did you
 17 understand that to mean?
 18 A. That he was -- he had prepared plans
 19 that had been filed with the Department of
 20 Buildings and the board of the building, the
 21 management -- and the management.
 22 Q. Yes?
 23 A. Those plans were proposing certain
 24 modifications to the apartment.
 25 Q. Yes. So your understanding was that

1 Deiss
 2 Garth Hayden was the filing architect and he
 3 submitted plans to the DOB and building
 4 management?
 5 A. Yes.
 6 Q. What was the purpose of, as you
 7 understood it, of submitting plans to the DOB?
 8 A. He was proposing changes to the
 9 entrance of the apartment.
 10 Q. Yes? And in so doing, why was it
 11 necessary, as you understood it, to make such a
 12 submittal to the DOB?
 13 A. Because the building requested it.
 14 Q. The building requested that DOB review
 15 be obtained?
 16 A. Yes.
 17 Q. Is that customary, for --
 18 A. It's customary, yes, for this type of
 19 building and for this type of apartment.
 20 Q. Okay. And it was also, prior to that,
 21 is it your understanding that Mr. Hayden's drawing
 22 or drawings were submitted to management for their
 23 review? Building management?
 24 A. Yes.
 25 Q. And again, that's something that's

1 Deiss
 2 necessary in these type of buildings?
 3 A. It is.
 4 EXH (Defendant Exhibit 1, four-page set of
 5 drawings Bates numbered GH 1 through GH 4
 6 entitled, "Sheets A-1 through A-4," 515 Park
 7 Avenue, 21st floor", marked for
 8 identification, as of this date.)
 9 Q. Ms. Deiss -- is it Ms. Deiss?
 10 A. Ms. Deiss, yes.
 11 Q. I'm going to show you a four-page
 12 collection of drawings Bates numbered GH 1 through
 13 GH 4 entitled, "Sheets A-1 through A-4," 515 Park
 14 Avenue, 21st floor." I ask you to look at those
 15 for a moment.
 16 (Witness and counsel perusing
 17 document.)
 18 A. Um-hum.
 19 Q. And looking at sheet 1, A-1, which is
 20 what you're looking at right now, have you ever
 21 seen that before?
 22 A. Yes, I have.
 23 Q. When was the first time you saw that
 24 document?
 25 A. I don't remember.

1 Deiss
 2 Q. Were you shown this at your first
 3 meeting with the --
 4 A. No.
 5 Q. -- with your prospective clients?
 6 A. No.
 7 Q. There was a contract entered into
 8 between Triarch and Medallion or Voronchenko,
 9 correct?
 10 A. Can yes.
 11 Q. I think it was with Medallion?
 12 A. Medallion.
 13 Q. Yes. Were you provided with these
 14 plans before you entered into the contract?
 15 A. No.
 16 Q. Who signed the contract on behalf of
 17 Triarch, do you remember?
 18 A. I'm not sure. Stephen Corelli, I
 19 assume.
 20 Q. Yes. You don't recall signing the
 21 contract?
 22 A. I'm not sure. I haven't looked at it
 23 recently.
 24 Q. Whether you received this before or
 25 after the contract was actually entered into, did

1 Deiss
 2 you receive a copy of, let's start with sheet A-1.
 3 Were you provide with a copy of sheet A-1 before
 4 you started doing your work?
 5 A. No.
 6 Q. How did you come to --
 7 A. This is dated -- did you see the date
 8 on this -- oh. Sorry.
 9 Q. Let's let me point something out,
 10 since you mentioned the date. I'm going to direct
 11 your attention down here to the -- there's a stamp
 12 on here. Do you see that stamp?
 13 A. Oh, yeah. Okay.
 14 Q. And that stamp, that's from the plan
 15 examiner, correct?
 16 A. Yeah.
 17 Q. And that date on there is June 26th,
 18 2008, would you agree with me?
 19 A. Yes, I do.
 20 Q. And looking at that, would that be an
 21 indication to you that these plans have been
 22 reviewed by the DOB at least as of that date, June
 23 26th, 2008?
 24 A. Yes, it is.
 25 MR. MANDEL: Please let him finish the

1 Deiss
 2 question.
 3 Q. And you see that there's a bar code
 4 that's been added to the, as you look at it, the
 5 right-hand side of these drawings, do you see
 6 that?
 7 A. Yes, I do.
 8 Q. Are you familiar with what that is?
 9 A. Yes.
 10 Q. Okay. What is that, to your
 11 understanding?
 12 A. That's the approval by the Department
 13 of Buildings.
 14 Q. So that would be added to a set of
 15 plans after the DOB has reviewed it and approved
 16 it, correct?
 17 A. Yes.
 18 Q. Okay. Now, going back, prior to the
 19 start of Triarch's work on behalf of either
 20 Medallion and/or Voronchenko, were you in
 21 possession of a copy of at least sheet A-1?
 22 A. No. Not that I know. Not that I
 23 remember.
 24 Q. One of the two sheets that you say you
 25 got, an eight-and-a-half-by-eleven, was it a

1 Deiss
 2 reduction of just the actual drawing that we see
 3 here --
 4 A. No, it was not.
 5 Q. Okay. Now, this first sheet that we
 6 see here says, "Existing condition/demolition
 7 plan."
 8 Do you agree with me? "Existing
 9 condition" --
 10 A. I do.
 11 Q. At any point prior to Triarch doing
 12 its work, did it receive and review this
 13 particular drawing, "Existing condition/demolition
 14 plan"?
 15 A. Not that I remember.
 16 Q. Okay. But at some point you've seen
 17 this sheet, correct?
 18 A. At some point, yes.
 19 Q. At some point. Do you know whether
 20 you saw it before or after the relationship with
 21 Voronchenko was terminated?
 22 A. I definitely remember seeing them
 23 after the relationship was terminated, which means
 24 recently.
 25 Q. When you say "recently," do you mean

1 Deiss
 2 within the past two months you've seen it?
 3 A. Within the past year or so.
 4 Q. Directing your attention to sheet
 5 A-2 -- and A-2 is entitled, "Construction plan,"
 6 correct?
 7 A. Yes, it is.
 8 Q. Have you ever seen this sheet before?
 9 A. Yes, I have.
 10 Q. Okay. And when was the first time you
 11 saw this sheet?
 12 A. Again, recently.
 13 Q. Sometime after the termination of the
 14 contractual relationship?
 15 A. Yes.
 16 Q. Okay. And at no time during your work
 17 did you ever look at or review this particular
 18 sheet, correct?
 19 A. Not that I remember.
 20 Q. I'll direct your attention to sheet
 21 A-3, and you'll agree with me again that this has
 22 the DOB bar codes on it, correct?
 23 A. Yes, it does.
 24 Q. And it's a copy, but you see that
 25 there's, when the DOB receives and approves a set

1 Deiss
 2 of plans, they actually punch it, correct?
 3 A. Yes, they do.
 4 Q. And as you see down here as you look
 5 at it in the lower right, the word "approved"?
 6 A. Yes.
 7 Q. It looks like a date of 6/26/08.
 8 Do you see that date?
 9 A. Yes, I do.
 10 Q. Now, when you were involved in the
 11 project prior to the termination of the
 12 relationship in roughly February 8, 2009, did you
 13 ever review this particular drawing?
 14 A. Not that I remember.
 15 Q. Okay. And do you know whether your
 16 office was in possession of this set of, just
 17 these four sheets of drawings prepared by Garth
 18 Hayden?
 19 A. I don't know.
 20 MR. MANDEL: At any time?
 21 MR. McKEE: No, during the project.
 22 Q. Okay. So you don't recall whether you
 23 had --
 24 A. I don't.
 25 Q. And whether you personally reviewed

1 Deiss
 2 them or not, you don't remember ever just, at
 3 least, seeing them?
 4 A. I don't.
 5 Q. And why don't we look at the last page
 6 as well. Well, before we go on, what do you
 7 understand this page or sheet A-3 to be?
 8 A. Elevations. And a floor plan of the
 9 foyer.
 10 Q. So these are just, the rest of the
 11 depictions on the main body of this, these are
 12 elevations of -- of what? If you can tell me.
 13 A. This is the living room (indicating).
 14 Q. Looking at the top? Top center?
 15 A. Yes.
 16 Q. This is an elevation of the living
 17 room?
 18 A. Yes, it is.
 19 Q. And it shows in general some finishes
 20 that would be included; correct?
 21 A. Yes.
 22 Q. So for example, as you look at it, it
 23 shows wood molding along the top, correct?
 24 A. Yes. Correct.
 25 Q. And it looks like there are some

1 Deiss
 2 panels, and there's a notation, "Leather insert,
 3 wood panel."
 4 A. Yes.
 5 Q. And then along the bottom it looks
 6 like it says, "8-inch wood base."
 7 A. Yes.
 8 Q. What's the purpose of a detail like
 9 that, in general?
 10 A. That's not a detail. I don't know.
 11 In this particular case, there's no reason to file
 12 the drawings this way.
 13 Q. Well, you anticipated where I was
 14 going to go with my question. But we'll get to
 15 that.
 16 But you said this isn't a detail.
 17 What would you call this?
 18 A. An elevation.
 19 Q. Just an elevation. Okay. And then in
 20 the center, what is that? Another elevation?
 21 A. Another elevation.
 22 Q. And could you tell us what that's an
 23 elevation of, what part of the project?
 24 A. It looks like it's -- um -- on the
 25 other side of the living room throughout the

1 Deiss
 2 foyer.
 3 Q. So it's a different elevation but,
 4 again, of the same room as you understand.
 5 A. Yes.
 6 Q. Now, over here on the right, say, the
 7 right one-third of sheet A-3, what is that?
 8 A. Handicapped notes.
 9 Q. And that relates to door openings and
 10 access?
 11 A. Yes.
 12 Q. And I direct your attention now to
 13 sheet A-4 of this set, and have you ever seen this
 14 before?
 15 A. Not that I remember. I mean, not --
 16 not -- recently I have seen it, yes.
 17 Q. But not when Triarch was working on
 18 the project?
 19 A. I don't remember now.
 20 Q. And this is entitled "Deflected
 21 Ceiling Plan"?
 22 A. Yes.
 23 Q. And what's the pt
 24 ceiling plan?
 25 A. To show lighting

*Deflected
Ceiling Plan*



1 Deiss
 2 Q. Kind of a birds-eye view of where
 3 walls would be positioned?
 4 A. Yes.
 5 Q. Would you say that the level of detail
 6 that's provided in these drawings is something
 7 above and beyond just what would be required of a
 8 filing architect as you explained a few minutes
 9 ago?
 10 A. Barely.
 11 Q. Barely. But it's something more than,
 12 correct?
 13 A. Not really.
 14 Q. Okay. So you're changing. You're
 15 going backwards here. So you started by saying
 16 that they don't look like filing plans to now
 17 "barely," and now "not really."
 18 A. I did not say that.
 19 MR. MANDEL: Objection.
 20 MR. McKEE: That's fine.
 21 Q. Let's go to sheet A-1 of this series
 22 of drawings. This is the existing
 23 conditions/demolition plan, correct?
 24 A. Yes.
 25 Q. Now, when you said changes to the

1 Deiss
 2 lights that are being added
 3 Q. Yes. And there's a
 4 here a wood door schedule, correct?
 5 A. Yes.
 6 Q. And then the lower right --
 7 A. Handicapped notes.
 8 Q. Some more handicapped notes. And --
 9 okay. Now, I'm not going to say this right,
 10 because you started to say that -- I'll just go
 11 back to how I was going to ask the question.
 12 Now, you said a few minutes ago that
 13 you were told Garth Hayden was retained as the
 14 filing architect, correct?
 15 A. Yes.
 16 Q. Now, and in that capacity, he was,
 17 really had to do with changes to the entrance,
 18 correct? You said --
 19 A. That's what I was told.
 20 Q. Okay. Now, the two drawings that you
 21 received, the two eight-and-a-half-by-eleven
 22 drawings that you received which you understood to
 23 have been generated by Garth Hayden, did they have
 24 any of the level of detail that we see here?
 25 A. No. They were floor plans.

1 Deiss
 2 entrance, you meant the foyer, correct?
 3 A. Correct.
 4 Q. When you mentioned or said that, did
 5 you also mean to include removal of the entire
 6 hallway that separated the elevator from the
 7 foyer?
 8 A. That is the entrance.
 9 Q. So your concept of modifications to
 10 the entrance includes that, removal of that
 11 hallway, separating the elevators from the foyer,
 12 correct?
 13 A. Correct.
 14 Q. Did it also include modifications to
 15 what we might term the bedroom hallway where it
 16 adjoins the foyer and the elevator entrance?
 17 Would you still consider that to just be
 18 modification to the entrance?
 19 A. Yes.
 20 Q. Okay. And then how about
 21 modifications or changes to the wall that
 22 separated the foyer from what was originally
 23 designated as bedroom 3, would you include that as
 24 modifications to the entryway?
 25 A. Yes.

1 Deiss
 2 Q. What about removal of the wall between
 3 bedroom number 3 and under that, in parentheses,
 4 it says "(library)," removal of that wall that
 5 separates bedroom 3 from the living room, would
 6 you consider that to be modification to the --
 7 A. No.
 8 Q. -- entryway? You have to let me
 9 finish my question.
 10 A. I thought it was finished.
 11 Q. No. You have to understand, I make
 12 fun of the south but I lived down there a long
 13 time so I tend to speak a little slowly sometimes.
 14 So just take a pause, and I'll get my question
 15 out, okay?
 16 A. Okay.
 17 Q. Great. Now, would you agree with me,
 18 or for purpose of my questions, we'll call this,
 19 this says, "Hallway number 2." We'll call that
 20 the bedroom hallway, okay?
 21 A. Okay.
 22 Q. So if I say "the bedroom hallway," and
 23 they appear on your plans, too, you'll know that
 24 I'm talking about this hallway that runs down to
 25 the master bedroom and the other two bedrooms,

1 Deiss
 2 Q. When you first went to the apartment,
 3 was -- had any work, any demolition work been done
 4 on it yet?
 5 A. No.
 6 Q. Actually, I should precede that
 7 question. I assume you went to the apartment
 8 because you weren't sure if your first meeting
 9 happened at the apartment or at the -- at your
 10 offices. You did go to the apartment.
 11 A. Yes, we did.
 12 Q. You couldn't tell me how many times
 13 you went to the apartment, you personally?
 14 A. A few times. I don't know exactly how
 15 many times.
 16 Q. More than five?
 17 A. No.
 18 Q. Five or less?
 19 A. Five or less.
 20 Q. Okay. When you first went there, was
 21 this partition between bedroom 3 and the living
 22 room still up?
 23 A. Yes.
 24 Q. And the hearth, was there a hearth
 25 here in the living room?

1 Deiss
 2 okay?
 3 A. Okay.
 4 Q. Great. Now, you see that there's
 5 removal of a doorway here (indicating) or -- yes,
 6 there's removal of a doorway and a partial wall
 7 towards the left in the bedroom hallway, do you
 8 see that?
 9 A. Yes.
 10 Q. Would you consider that a modification
 11 to the entry or foyer?
 12 A. No.
 13 Q. And then down here, there's -- down
 14 here to your left, you come down the bedroom
 15 hallway, there's some more partitions or closet
 16 openings which are being slated for demolition, do
 17 you agree with that?
 18 A. Yes.
 19 Q. Is that modification to the foyer or
 20 entryway?
 21 A. No.
 22 Q. There's also reference in the living
 23 room to removal of fireplace box, mantle, hearth,
 24 etc. Do you see that?
 25 A. Yes.

1 Deiss
 2 A. I think so.
 3 Q. I see. So no demolition had occurred
 4 yet, correct?
 5 A. I don't think so.
 6 Q. Now, looking at sheet A-2, there's
 7 portions on here which have a very dark line,
 8 correct?
 9 A. Yes.
 10 Q. And those would indicate what, new
 11 construction?
 12 A. Yes.
 13 Q. And they show new construction more or
 14 less outlining two of the four walls of bedroom
 15 number 3, correct?
 16 A. Yes.
 17 Q. And ultimately that's where the
 18 library was designed to go, correct?
 19 A. That's correct.
 20 Q. And this opening between bedroom
 21 number 3 or library, and the living room, is this
 22 a designation of pocket or sliding doors?
 23 A. Pocket doors.
 24 Q. Pocket doors. They slide back into a
 25 recess?

1 Deiss
 2 A. Yes, they do.
 3 Q. And here along the entrance into the
 4 master bedroom, although it's not depicted with a
 5 dark line, there's now an inclusion of basically a
 6 solid wall of closets as you enter the master
 7 bedroom, correct?
 8 A. Correct.
 9 Q. And there's some reconfiguration of
 10 closets flanking either side of the entrance to
 11 the master bath, correct?
 12 A. Right.
 13 Q. Yes. So you'd agree with me, wouldn't
 14 you, that the changes depicted on Mr. Hayden's
 15 plans which were approved in June of 2008 call for
 16 something much more than modifications to the
 17 foyer, correct?
 18 A. Correct. More. Not much more.
 19 Q. I'll accept that. Now, at any point,
 20 when you -- you, Triarch -- was working for
 21 Medallion, and indirectly for Mr. Voronchenko, did
 22 anybody from your office or an expediter or
 23 anybody else on your behalf go down to the DOB to
 24 pull the sets of any preexisting drawings related
 25 to this apartment?

1 Deiss
 2 A. No.
 3 Q. You didn't think that that was a wise
 4 thing to do, given the fact that you knew that
 5 another architect had submitted some type of plans
 6 previously to your involvement?
 7 A. No.
 8 Q. Have you ever worked on other projects
 9 where you come in after another architect has been
 10 involved?
 11 A. Yes.
 12 Q. And on those other projects, have you
 13 ever gone and gotten copies, complete copies of
 14 the original architect's work to review it and
 15 compare to it what your new scope of work would
 16 be?
 17 A. Yes.
 18 Q. Why didn't you do that on this
 19 project? Why didn't somebody from Triarch go down
 20 to the DOB and pull the preexisting filed plans?
 21 A. Usually the client provides the
 22 drawings.
 23 Q. But you were informed that Mr. Hayden,
 24 as the filing architect, had already filed and
 25 obtained approval from the DOB, correct?

1 Deiss
 2 A. Yes.
 3 Q. And you didn't think it was, would
 4 have been prudent to go to the DOB and get a
 5 complete copy of everything that the filing
 6 architect had already submitted and gotten
 7 approved?
 8 A. We may have received these drawings at
 9 some point. I just don't remember.
 10 Q. Okay.
 11 THE WITNESS: Can we take a break?
 12 MR. McKEE: Of course.
 13 (Recess taken.)
 14 EXAMINATION (Cont'd.)
 15 BY MR. McKEE:
 16 Q. I'm remiss, I guess, first of all, I
 17 should have told you that if you want water or
 18 coffee, please just ask, and --
 19 A. Thank you. We were offered in the
 20 beginning, so --
 21 Q. Okay. The other thing is, my
 22 understanding of the Federal Rules is that, during
 23 breaks, once the deposition begins until its
 24 completion, during breaks, the witness and counsel
 25 are not to consult or discuss the testimony at

1 Deiss
 2 all.
 3 MR. MANDEL: What federal rule are you
 4 referring to?
 5 MR. McKEE: I believe you can find
 6 case law on it. I can't cite it off the top
 7 of my head.
 8 MR. MANDEL: I think there is a rule
 9 in the Eastern District. I think there is
 10 no similar rule in the Southern District,
 11 and I think each in rule in the Eastern
 12 District doesn't say what you are indicating
 13 it says, so I disagree with you about the
 14 rules.
 15 MR. McKEE: I put it on the record,
 16 and to the extent that it does apply, I'll
 17 keep that in mind when we take breaks for my
 18 client as well.
 19 Q. Continuing, I'm going to hand you
 20 Exhibit 2.
 21 EXH (Defendant Exhibit 2, contract signed
 22 by Stephen Corelli, marked for
 23 identification, as of this date.)
 24 (Document placed before the witness.)
 25 Q. Have you ever seen this document

1 Deiss
 2 before?
 3 A. Yes, I have.
 4 Q. If you go to the last page -- if you
 5 go to page 4, there's a signature there for the
 6 architect. Do you see that?
 7 A. I do.
 8 Q. Do you recognize the signature on
 9 there?
 10 A. I do.
 11 Q. And whose signature do you recognize
 12 that to be?
 13 A. Stephen Corelli.
 14 Q. Your partner, correct?
 15 A. Yes.
 16 Q. Did you have any involvement in
 17 negotiating any of the terms of the contract?
 18 A. No, I did not.
 19 Q. Prior to doing any work on the
 20 project, did you review it at all?
 21 A. No, I did not.
 22 Q. Prior to today, have you ever reviewed
 23 the terms of this contract?
 24 A. Yes, I have.
 25 Q. When did you first review it?

1 Deiss
 2 construction phase.
 3 Q. Okay. And then is that separate and
 4 apart from interior design services?
 5 A. Hard to tell.
 6 Q. Do you draw a distinction between
 7 architectural and interior design services?
 8 A. No.
 9 Q. Earlier, you testified about your
 10 background as having a degree in interior
 11 architecture, which goes toward, more towards
 12 construction, and then later obtaining a degree in
 13 interior design, which goes more towards
 14 decoration.
 15 Does interior design services at all
 16 relate to the decoration aspects of your work?
 17 A. Yes, it does.
 18 Q. If we go to the next page, under
 19 article 1, "Architect's Responsibilities," do you
 20 see that?
 21 A. Yes.
 22 Q. And it says, "interior Design."
 23 A. Yes.
 24 Q. It says, "The architect's services
 25 include the following consulting services:

1 Deiss
 2 A. A week ago.
 3 Q. That was the first time, to your
 4 recollection?
 5 A. Yes.
 6 Q. And why did you review it a week ago?
 7 A. Because I was going to be deposed.
 8 Q. Okay. So in anticipation of being
 9 deposed, you thought it prudent to review this.
 10 A. Yes, I did.
 11 Q. Okay. Now, on the first page, at the
 12 bottom, under the title, "The Owner and Architect
 13 Agree As Follows," do you see that?
 14 A. Yes.
 15 Q. And it begins, "The architect will
 16 provide a full scope of architectural and interior
 17 design services." Did I read that correctly?
 18 A. Yes.
 19 Q. What, if any, is your understanding of
 20 what is meant by "a full scope of architectural
 21 services"?
 22 A. Schematic design, design development,
 23 construction documents.
 24 Q. Anything else?
 25 A. Bidding and negotiation in

1 Deiss
 2 "Interior design?"
 3 Would that relate to the provision of
 4 decorating?
 5 A. Yes, I assume so.
 6 Q. As a partner in Triarch, do you have
 7 occasion to negotiate and execute contracts on its
 8 behalf?
 9 A. I do.
 10 Q. And do you understand or do you have
 11 an understanding that the inclusion of a separate
 12 phrase, "Interior design," is meant to indicate a
 13 different type of work than what might be
 14 considered architectural?
 15 A. That depends on the client and on the
 16 contract.
 17 Q. Looking at this contract, which on the
 18 first page references architectural and interior
 19 design services, would you say that that
 20 encompasses two different scopes of work?
 21 A. I don't know.
 22 Q. On page two, under where it says,
 23 "Interior Design," there's reference to, "Based on
 24 the approved project requirements, the architect
 25 shall develop a design."

1 Deiss
 2 Do you see that, second sentence? I
 3 can point it out to you.
 4 A. I have it, yes.
 5 Q. "Based on the approved project
 6 requirements, the architect shall develop a
 7 design."
 8 Do you see that?
 9 A. Yes, I do.
 10 Q. What do you understand is meant by
 11 "design" in that context?
 12 A. I would understand -- I would think in
 13 this particular case, it means that I should
 14 develop an idea. The design here really means an
 15 idea about how the project is going to look and
 16 be. A creative idea.
 17 Q. Does it encompass something more than
 18 the spatial aspects of the project?
 19 A. Yes.
 20 Q. So it goes beyond merely the
 21 positioning of walls or doors to paint colors,
 22 textures --
 23 A. Materials.
 24 Q. -- materials. Okay. And the next
 25 sentence references that, "Upon owner's approval

1 Deiss
 2 of the design, the architect shall prepare
 3 construction documents indicating requirements for
 4 construction of the project."
 5 Do you see that reference?
 6 A. I do.
 7 Q. And again, reference there to "the
 8 design," does that, again, encompass something
 9 more than just the spatial aspects of the project?
 10 A. Yes, it does.
 11 Q. Something above and beyond location of
 12 walls or maybe materials that walls or framing
 13 might require, into something inclusive of
 14 textures and finishes that go on walls --
 15 A. Yes.
 16 Q. -- or floors or ceilings. Okay. And
 17 then the last paragraph in article 1 references,
 18 "Construction Phase."
 19 Do you see that? It says, "During the
 20 construction phase"? Last paragraph under,
 21 "Article 1."
 22 A. Yes, I do. I'm just reading it. Yes,
 23 I do.
 24 Q. Okay. So is it your understanding
 25 that, as part of your contractual scope of work,

1 Deiss
 2 Triarch was going to act as the owner's
 3 representative and provide administration of the
 4 contract?
 5 A. Yes. It is.
 6 Q. And the type of duties that --
 7 A. Contract between the owner and the
 8 contractor. You have to continue this.
 9 Q. Yes. And the type of duties that the
 10 architect would carry out during the construction
 11 phase are more or less spelled out in the last
 12 sentence of that provision?
 13 A. Yes.
 14 Q. If you go down to article 3, it's
 15 entitled, "Use of Documents," do you see that?
 16 A. Yes.
 17 Q. The first sentence references that,
 18 I'm paraphrasing, let's say, materials prepared by
 19 the architect "are instruments of the architect's
 20 service and are for the owner's use solely with
 21 respect to this project."
 22 Do you see that?
 23 A. Yes.
 24 Q. What's your understanding of what's
 25 meant by "instruments of service"?

1 Deiss
 2 A. My understanding is that the owner is
 3 allowed to use them in order to build the project.
 4 Q. And the inclusion of the word "solely"
 5 with respect to this project means that the owner
 6 can't then take that same set of plans and go use
 7 it to build, say it was a house plan, he couldn't
 8 just go and keep duplicating it on house after
 9 house after house.
 10 A. That's what it says.
 11 Q. Yes. Okay. And then the last
 12 sentence in that provision begins, "When
 13 transmitting copyright protected information," do
 14 you see that?
 15 A. Yes, I do.
 16 Q. What's your understanding of what that
 17 last provision means?
 18 A. My understanding is that you have to
 19 be the owner of the copyright in order to be able
 20 to use the information in any -- in any other way.
 21 Q. Do you have, to your understanding, if
 22 the owner were to provide you with any documents
 23 on a project, as you said, you were provided with
 24 two eight-and-a-half-by-eleven drawings which you
 25 understood to be from Garth Hayden.

1 Deiss
 2 Would you look at this clause to say
 3 that, based upon that clause, the owner would be
 4 representing to you that he had authority to give
 5 that to you?
 6 A. Yes, I would.
 7 Q. Okay. And if the owner gave you any
 8 other documents in connection with their work on
 9 the project, would you have the same conclusion,
 10 that the owner was holding himself out as having
 11 authority to give you documents that you could
 12 then rely upon?
 13 A. Yes, I would.
 14 Q. Turn the page, please. Article 6,
 15 "Payments and Compensation to the Architect," your
 16 overall compensation under the contract was to be
 17 17 percent of the total construction cost?
 18 A. Yes.
 19 Q. Is that your typical fee?
 20 A. No. We typically charge more than
 21 that.
 22 Q. What is your typical fee?
 23 A. Twenty percent.
 24 Q. Was there a reason why you gave a 17
 25 percent cost, which is three percent below your

1 Deiss
 2 Q. And if I understand your billing
 3 structure, you were supposed to receive an initial
 4 payment of \$21,250, correct?
 5 A. That's correct.
 6 Q. And then, that downpayment would be
 7 backed out of the total 17 percent fee, or was
 8 that on top of the 17 percent fee?
 9 A. It is part of the total fee.
 10 Q. Thank you. And then you break out a
 11 series of scheduled payments, correct?
 12 A. Correct.
 13 Q. And the schedule provides for
 14 schematic design, design development, construction
 15 development, bidding and negotiation, and
 16 construction phase.
 17 Is that a typical way you structure
 18 your fee?
 19 A. Yes, it is.
 20 Q. What, from Triarch's perspective,
 21 constitutes schematic design phase? What is that?
 22 A. Preliminary sketches of the layout for
 23 the apartment.
 24 Q. Initial meetings with the clients?
 25 A. Yes.

1 Deiss
 2 normal or typical cost?
 3 A. It was going to be a family discount.
 4 Q. Okay. What do you mean by "a family
 5 discount"?
 6 A. My partner's wife's father is friendly
 7 with Mr. Voronchenko.
 8 MR. McKEE: Read that back.
 9 (Record read.)
 10 Q. By "partner," do you mean Mr. --
 11 A. Mr. Corelli.
 12 Q. -- Corelli's wife's father is friendly
 13 with Voronchenko. Okay.
 14 MR. MANDEL: His current wife?
 15 THE WITNESS: His ex-wife.
 16 Q. Was she an ex-wife at the time?
 17 A. No. Not at the time of the contract.
 18 Q. So in September -- let's check this.
 19 I think it's September of 2008, everything was
 20 happy, more or less.
 21 A. Yes.
 22 Q. And to your understanding, and I'll
 23 ask Mr. Corelli this, but is that how Voronchenko,
 24 or Medallion, became aware of Triarch?
 25 A. Yes, it is.

1 Deiss
 2 Q. Go over some programmatic issues as to
 3 what they want or don't want?
 4 A. Correct.
 5 Q. And you come up with some preliminary
 6 rough or crude sketches for them to look at and
 7 give you a general idea where they want to go,
 8 correct?
 9 A. Correct.
 10 Q. All right. Now, how is that
 11 distinguished from design development phase?
 12 A. In design development, you present
 13 drawings that -- showing much more of the idea
 14 that you're developing. You start integrating
 15 details and showing materials, and working on the
 16 visual aspect of -- of the project.
 17 MR. McKEE: Read that back, please.
 18 (Record read.)
 19 Q. So you better refine the work.
 20 A. Yes.
 21 Q. Okay. During design development
 22 phase, during this refining process where you add
 23 more details, materials, visual details of how the
 24 space is going to look, the owner has the
 25 authority to make changes, correct?

1 Deiss

2 A. Yes.

3 Q. As part of that process of the owner
4 reviewing your work, your suggestions and
5 schematic design and design development phase, do
6 you put any kind of limit or cap on how
7 accommodating you're willing to be for an
8 individual owner's preferences?

9 A. Sometimes we do.

10 Q. Okay. Do you typically include
11 something like that in your contract?

12 A. No, we don't.

13 Q. All right. So if it's not spelled out
14 in a contract, how do you determine when enough is
15 enough as far as the number of changes in either
16 individual details or entire direction a project
17 might be taking?

18 A. It depend how substantial those
19 changes are and how many times within the project
20 they occur. There are no specific rules for that.

21 Q. Okay. Does it at all matter as to the
22 total fee that you're receiving? For instance, in
23 this matter, you were receiving a discounted fee
24 of 17 percent. Does that factor in at all --

25 A. No, it does not.

1 Deiss

2 Q. -- you have to let me finish my
3 question -- as to the number of changes or
4 modifications you're willing to make?

5 A. The percentage of the fee is not
6 affected by that.

7 Q. No, no. You have my question exactly
8 backwards. The amount -- I'll rephrase it for
9 you.

10 The degree to which you're willing to
11 accommodate -- "you," meaning Triarch -- is
12 willing to accommodate an owner by changing a
13 direction, either in the large sense or just a
14 more minor detail, such as, you know, particular
15 materials or finishes that might be used, does the
16 degree to which Triarch is willing to accommodate
17 an owner depend at all upon the percentage fee
18 that it's getting?

19 A. No, it does not.

20 Q. Okay. So the degree to which Triarch
21 was willing to work cooperatively with Medallion
22 and Mr. Voronchenko was not at all affected by the
23 fact that you were getting a lesser fee than what
24 you'd normally get.

25 A. No.

1 Deiss

2 Q. Okay. What determines movement from
3 the design development phase into construction
4 development? When do you decide it's time to move
5 into the construction development phase?

6 A. When you need to get more specific
7 ideas about the way the project is going to be
8 built.

9 Q. What do you mean by that, more
10 specific ideas about how it's going to be built?

11 A. When you need to -- when you need to
12 get ready to be able to build the project.

13 Q. So it's not really about ideas about
14 how it's to be built. It's to take the final idea
15 and put it on paper, correct?

16 A. Yes. That's right.

17 Q. So because, if it has to do with
18 ideas, that would still be design development,
19 wouldn't it?

20 A. Yes.

21 Q. Now, once you move into construction
22 development phase, you prepare your set of
23 construction drawings, correct?

24 A. Correct.

25 Q. You also would prepare your

1 Deiss

2 specifications, correct?

3 A. Correct.

4 Q. Were specifications prepared for this
5 job? A separate spec book?

6 A. No.

7 Q. Any specifications, to the extent they
8 exist, are they on the drawings?

9 A. Yes, they are.

10 Q. For a project of this scope, I'll all
11 it a luxury flat, okay, that's -- you wouldn't
12 typically create a separate spec book, would you?

13 A. No, we would not.

14 Q. It doesn't warrant it, correct?

15 A. It doesn't warrant it.

16 Q. Yes. Now, if you're in the design
17 development phase, how accommodating is Triarch
18 typically about making programmatic changes to the
19 design?

20 A. In which phase, design development?

21 Q. No, construction development.

22 A. We are flexible.

23 Q. Yes. But typically, in the progress
24 of a typical project, all those questions about
25 where walls should be, how big a room is going to

1 Deiss
 2 be, where openings are going to be, what the floor
 3 is going to look like and the walls, all that is
 4 supposed to be hashed out by the time you complete
 5 design development, right?
 6 A. Ideally, it is.
 7 Q. Now, I notice your fee is based upon
 8 different percentages for each of the phases,
 9 correct?
 10 A. Correct.
 11 Q. That payment comes upon completion of
 12 that particular phase or at the start?
 13 A. At completion.
 14 Q. Okay. So for example, was Triarch
 15 paid its initial deposit of \$21,250?
 16 A. Yes, we were.
 17 Q. Okay. And then, upon signing the
 18 contract, you were in schematic design phase,
 19 correct?
 20 A. Correct.
 21 Q. And upon completion of schematic
 22 design phase, under the contract, you should be
 23 paid 15 percent, correct?
 24 A. Correct.
 25 Q. And then you move into design

1 Deiss
 2 don't see a projected cost of construction, do
 3 you?
 4 A. No.
 5 Q. When you first -- "you" meaning
 6 Triarch -- first contracted with Medallion, did
 7 you have in your own mind an understanding of what
 8 the projected cost of construction was to be?
 9 A. I think there was discussion of
 10 \$800,000. But the -- the budget was never really
 11 discussed. It was not an issue.
 12 Q. When you say it was not an issue, it
 13 wasn't an issue for you, is that what you're
 14 saying?
 15 A. For the client.
 16 Q. The client -- by "the client," do you
 17 mean Medallion or Voronchenko?
 18 A. Voronchenko.
 19 Q. So in that initial meeting you had
 20 with Voronchenko, did he say anything about
 21 budget?
 22 A. No.
 23 Q. At any of the meetings which may have
 24 predated the contract itself, was there any
 25 discussion of budget?

1 Deiss
 2 development phase, correct?
 3 A. Correct.
 4 Q. And then upon completion of that
 5 phase, you were to be paid 25 percent of your
 6 overall fee, correct?
 7 A. That's what the contract says, yes.
 8 Q. Yes. And so on through the rest of
 9 the project.
 10 A. And so on.
 11 Q. Okay. And that's how you typically do
 12 it, correct?
 13 A. Correct.
 14 MR. McKEE: Just bear with me a
 15 second.
 16 (A pause in the proceedings.)
 17 Q. Now, your contract does not -- well,
 18 correct me. Does your contract provide a
 19 projected cost of construction for this project?
 20 A. Um -- I don't know.
 21 (Witness perusing document.)
 22 A. I don't know.
 23 Q. Okay.
 24 A. If it was in here, it's in here.
 25 Q. Well, looking at it right now, you

1 Deiss
 2 A. I don't know. I was not there.
 3 Q. When you say you weren't there, what
 4 do you mean?
 5 A. I meant after -- I think I remember I
 6 met Voronchenko after the contract was made.
 7 Q. Okay. So since questioning began this
 8 morning, and I asked you about that initial
 9 meeting, that initial meeting I was asking about,
 10 was that the first meeting involving Triarch and
 11 Medallion or had a meeting occurred without you
 12 being present?
 13 A. I think there was a meeting without me
 14 being present.
 15 Q. Were you ever informed of who was at
 16 that meeting where you weren't present?
 17 A. Mr. Corelli and Mr. Braverman. I
 18 don't know if Mr. Voronchenko was there, too.
 19 Q. Okay. And the connection between
 20 Voronchenko and Corelli runs through Voronchenko,
 21 not through Medallion.
 22 A. Yes.
 23 Q. Were you ever given any document or
 24 anything which referenced an \$800,000 estimated --
 25 estimated \$800,000 cost of construction?

1 Deiss

2 A. No.

3 Q. When this agreement was drawn up, and
4 there's a 17 percent fee included in there, it's
5 not necessary for Triarch to have a firm notion of
6 what the estimated cost of construction is going
7 to be so it can estimate what it needs as a
8 reasonable return on its efforts?

9 A. Well, I was not part of the discussion
10 of the -- of any budget. And I was told when we
11 did our invoice that it should be referenced as
12 based on a budget of \$800,000.

13 Q. Okay.

14 A. The budget was never discussed in any
15 of our meetings whatsoever.

16 Q. Now, if you go to the very bottom of
17 this article 6 -- I'm on page 3 -- there's
18 reference here to -- you can read the whole
19 paragraph, of course, but it references services
20 not completed within six months of the date of
21 this agreement.

22 Was it anticipated that the project,
23 the services of the architect, would run six
24 months, including completion of the construction
25 phase?

1 Deiss

2 A. To my reflection, in this particular
3 case, our work was going to be considered interior
4 design on this project.

5 Q. All your work?

6 A. The work we were going to provide for
7 the project.

8 Q. Was to be considered interior design?

9 A. Yes.

10 Q. So when you say that Triarch's
11 services were to be considered interior design
12 services --

13 A. In this particular case, yes.

14 Q. -- what -- although I think we kind of
15 discussed it, could you please define what that
16 means, interior design services?

17 A. It means that our services were more
18 in -- were more in the -- they were more in the
19 realm of designing and subdividing walls and
20 choosing materials and designing surfaces. And --
21 I don't know how to describe it. I mean -- than
22 really being part of the whole building process,
23 or being structural. It had more to do with
24 designing cabinetry, wall treatments, window
25 treatments, floor, ceiling, lighting, tiling.

1 Deiss

2 A. I don't know.

3 Q. At any of the meetings that you did
4 attend early in the project, whether it was before
5 this contract was signed or not, was there any
6 discussion with Voronchenko or Medallion about how
7 long this project was estimated to last?

8 A. No.

9 Q. Is the projected length of a project
10 something that Triarch is not concerned about when
11 entering into a contract for services?

12 A. No, we are.

13 Q. Is there a reason why there isn't a
14 particular start and stop date included in here?

15 A. We never include a start and stop date
16 in a project -- in a contract.

17 Q. Is there a specific reason why you
18 don't include that?

19 A. It's unpredictable because you're
20 dealing with a contractor. And it's impossible to
21 do a start and stop date for a project.

22 Q. The fee of 17 percent of total cost of
23 construction, that included both the architectural
24 and interior design services that were being
25 provided?

1 Deiss

2 Q. Yes. And you distinguish that from,
3 say, architectural services, which you would
4 define as what?

5 A. I'm only distinguishing it from more
6 structural work. More structural intervention in
7 the project.

8 Q. When you say "structural," are you
9 talking about positioning of walls and what, you
10 know, what kind of studs are going to be in walls
11 and what kind of preliminary materials? And I
12 don't mean finished materials like leather or
13 paneling, I'm talking about Sheetrock and
14 spackle, things like that.

15 A. There is not a real distinction here.
16 I mean it was more, our kind of services in this
17 particular case were more geared towards less
18 structural work. We were not remodeling the
19 entire apartment. We were redesigning parts of
20 the apartment.

21 Q. Okay. So getting back to my prior
22 question, all of those services, cabinetry, you
23 know, interior design work related to cabinetry
24 design, or wall finishes or floors and ceiling
25 finishes, types of lighting, locations, that all

1 Deiss
 2 fits within your 17 percent fee, yes?
 3 A. Yes.
 4 MR. McKEE: Now, when I obtained a
 5 copy of Triarch's project files,
 6 unfortunately, I did not get them
 7 Bates-stamped. So I'll represent that the
 8 documents which I'm about to show you came
 9 in the kind of groupings that I'm about to
 10 show you, at least when I got them back from
 11 my printer.
 12 I'm going to ask our stenographer,
 13 Mr. Levy, to mark this collection of
 14 documents as D-3.
 15 EXH (Defendant Exhibit 3, set of floor
 16 plans, marked for identification, as of this
 17 date.)
 18 MR. ISRAEL: Before you give it to
 19 her, can I see it? I just want to know what
 20 we're talking about.
 21 (A pause in the proceedings.)
 22 Q. Okay, Ms. Deiss --
 23 A. Yes.
 24 Q. -- I'm going to hand you a collection
 25 of documents. I'm going to ask you if you can

1 Deiss
 2 A. Yes.
 3 Q. And on the back side of that, we see
 4 what appear to be two computer-generated
 5 depictions of, would that be the foyer?
 6 A. Yes, it is.
 7 Q. And it shows -- it shows the floor and
 8 ceiling and how the walls might look, yes?
 9 A. Correct.
 10 Q. And then across the bottom under
 11 there, labeled A through H, there's different
 12 materials, correct?
 13 A. Correct.
 14 Q. For example, there's reference to
 15 Palisander. That's the type of wood?
 16 A. Yes, it is.
 17 Q. Is that a specific species of wood or
 18 is that a cut?
 19 A. It's a species of wood.
 20 Q. And then to the left, there's what
 21 looks like an overall floor plan, correct?
 22 A. Correct.
 23 Q. And below that is a slightly larger
 24 layout of the foyer, correct?
 25 A. Correct.

1 Deiss
 2 please allow your attorney to look at it first,
 3 but if you can just tell me generally what these
 4 are.
 5 A. These are floor plans.
 6 Q. Okay. You're pointing, it's the
 7 second or third page in, there's what looks like
 8 to a layperson, it looks like a photograph. Are
 9 those actually photographs or are those
 10 computer-generated?
 11 A. Computer-generated, right.
 12 Q. And then to the side, there's a floor
 13 plan, correct?
 14 A. That's correct.
 15 Q. And --
 16 A. On the bottom are materials.
 17 Q. And for example, this is the back of
 18 the first page or cover page.
 19 A. Um-hum.
 20 Q. The cover page, you'd agree with me,
 21 is a black background with the name of the
 22 property, and it says, "Interior renovations,"
 23 correct?
 24 A. Correct.
 25 Q. And it has Triarch's logo on it?

1 Deiss
 2 Q. All right. And we see that repeated
 3 on the second page here. Now, if we go to the
 4 back of the second page, there's, this is another
 5 computer-generated depiction?
 6 A. Yes, it is.
 7 Q. And that would be the living room
 8 wall?
 9 A. Right.
 10 Q. And behind that wall would be the
 11 dining room?
 12 A. Yes.
 13 Q. And on there we see a
 14 computer-generated depiction of a TV hanging
 15 there, and a couple of sconces on either side,
 16 yes?
 17 A. Yes.
 18 Q. And then again, there -- the TV, for
 19 the record, is showing Humphrey Bogart in the
 20 movie, "Casablanca." And then on the bottom we
 21 see some material selections, again, yes?
 22 A. Yes.
 23 Q. And again, a floor plan, and it seems
 24 to repeat itself for the next several pages, do
 25 you agree with that?

1 Deiss
 2 A. Yes, I do.
 3 Q. Showing different angles of different
 4 rooms, correct?
 5 A. Yes.
 6 Q. Then we come to a room which has some
 7 red features to it, and would you call that a
 8 barrel or vaulted ceiling?
 9 A. Vaulted.
 10 Q. Vaulted ceiling with some, what look
 11 like reddish tones, reddish/brownish tones.
 12 A. Correct.
 13 Q. And that would be the library?
 14 A. Yes, it is.
 15 Q. And that shows some bookcases along
 16 one wall? Yes?
 17 A. Yes.
 18 Q. And some furniture depicted in there?
 19 A. Yes.
 20 Q. Are these materials that were prepared
 21 by Triarch?
 22 A. Yes, they are.
 23 Q. Did you subcontract out the
 24 computer-generated photographs that we're looking
 25 at?

1 Deiss
 2 A. We used an outside contractor to do
 3 some of the programming for it.
 4 Q. Is that more efficient than having
 5 that done in-house?
 6 A. They have more powerful computers that
 7 are able to deal with the programs in a faster
 8 way.
 9 Q. And then their work product is just
 10 simply e-mailed back and forth?
 11 A. Yes, with a number of corrections in
 12 between, because everything is based on our input.
 13 Everything comes from extremely detailed drawings.
 14 Q. And so I guess we can identify
 15 these -- this group of documents as being
 16 computer-generated -- well, what would you call
 17 them? What would you call these,
 18 computer-generated what?
 19 A. Images.
 20 Q. Images. Thank you. Finishes and
 21 layouts?
 22 A. Yes.
 23 Q. Together with a floor plan for each
 24 proposed location? Yes?
 25 A. Yes.

1 Deiss
 2 Q. Towards the end of this first group
 3 there's a room that has kind of a tannish
 4 off-color with crosshatching on it. What is that,
 5 is that the bedroom?
 6 A. No, that's the dining room.
 7 Q. That's the dining room. Well, it's
 8 shown here on the floor plan, correct?
 9 A. Yes.
 10 Q. And then as we flip back through this
 11 document, we see some more copies of similar
 12 depictions, correct?
 13 A. Yes, correct.
 14 Q. We're looking at a page now when shows
 15 what would appear to be the master, or a portion
 16 of the master bath, correct?
 17 A. Correct.
 18 Q. And as you look at it, the tub is
 19 center, correct?
 20 A. Correct.
 21 Q. Off to the right are the -- is the
 22 double sink, correct?
 23 A. Correct.
 24 Q. And that tub that's depicted there,
 25 was that a preexisting tub, a new tub?

1 Deiss
 2 A. New tub.
 3 Q. New tub. Same location as original?
 4 A. Yes.
 5 Q. A few pages back we see a white room,
 6 whitish room, maybe a slight green undertones in
 7 the wall coverings, a couple of chairs, white
 8 bedspread, would that be the master bedroom?
 9 A. Yes, it is.
 10 Q. I see that there's a drape with a
 11 valence here; is that --
 12 A. Yes.
 13 Q. -- is that something that would
 14 typically be suggested as part of your scope of
 15 work, "Your" meaning Triarch?
 16 A. The drape?
 17 Q. Yes, the drapes, is that --
 18 A. In this particular -- in this
 19 particular project, it would be, yes.
 20 Q. Okay. What about the furniture, was
 21 the purpose of including depictions of furniture
 22 merely to show how pieces of furniture work in a
 23 given space or was it to suggest a particular
 24 piece of furniture as well?
 25 A. Both things. It was suggested -- it

1 Deiss
 2 was done to suggest a particular character more
 3 than a particular piece of furniture.
 4 Q. So, but as far as the product that you
 5 were preparing for your client, you would consider
 6 drapes or shades to be part of, say, or similar to
 7 floor finishes, wall finishes?
 8 A. Not necessarily. We do this for the
 9 whole image, for the drawing.
 10 Q. Some of the photographs have what
 11 appear to be visual art, or artwork.
 12 A. Yes.
 13 Q. Are these, for instance, we're looking
 14 at the living room here, between the two windows.
 15 There's what I'll call kind of Art Deco-ish
 16 looking picture.
 17 A. Um-hum.
 18 Q. Is that something that Voronchenko had
 19 or you just selected that --
 20 A. Yeah, we select that had as being part
 21 of the image.
 22 Q. It was selected as being part of the
 23 style and the colors, but not for that in
 24 particular?
 25 A. No. To be part of the whole --

1 Deiss
 2 Q. Scheme?
 3 A. -- scheme, yes.
 4 Q. I see. Now, we're looking at a
 5 depiction here of the library, correct?
 6 A. Correct.
 7 Q. We're about midway through this
 8 package and it appears to be looking towards the
 9 windows, correct?
 10 A. Yes, correct.
 11 Q. The doors. The doors appear to be
 12 metal with some kind of leather and then, I'll
 13 call them metal nails or tacks along them?
 14 A. Yes, um-hum. Correct.
 15 Q. Is that an idea that was thought up by
 16 Triarch or did Mr. Voronchenko have suggestions
 17 about what he wanted?
 18 A. Both ways.
 19 Q. I see. And that detail is carried
 20 over to the base of the bookcase. Again, is that
 21 something that Triarch suggested or --
 22 A. Triarch.
 23 Q. Because Mr. Voronchenko had some
 24 specific ideas about what he wanted on that wall,
 25 correct, on that door?

1 Deiss
 2 A. No.
 3 Q. Voronchenko never sent any depictions
 4 of what he wanted the door to look like?
 5 A. No, he did not.
 6 Q. How about any of his intermediaries,
 7 anyone from either Russia or Italy, they never
 8 forwarded any e-mails with attachments?
 9 A. No. We did send them to them. They
 10 didn't send them to us.
 11 Q. I see. Looking at the foyer, there's
 12 a floor detail there?
 13 A. Yes.
 14 Q. Now, is that a new detail or is that
 15 what the preexisting floor looked like?
 16 A. That's a new detail.
 17 Q. What would you do with these
 18 computer-generated images? What was the purpose
 19 of creating them?
 20 A. Sorry?
 21 Q. What was the purpose of creating these
 22 computer-generated images?
 23 A. Mr. Voronchenko had a hard time
 24 understanding architectural plans. He needed to
 25 have visual -- he needed to see everything

1 Deiss
 2 three-dimensionally. He needed to have drawings.
 3 Q. You mean he needed to have images.
 4 A. Images.
 5 Q. Rather than the drawings.
 6 A. Well, these are drawings, basically.
 7 These images are drawings.
 8 Q. Now, typically, in a project such as
 9 this where you're providing interior design
 10 services, do you provide computer-generated images
 11 of how certain finishes and materials will look?
 12 A. Not typically. Typically, no.
 13 Q. What's the criteria for when you do or
 14 don't?
 15 A. The client has to specifically request
 16 them.
 17 MR. McKEE: Let's mark this.
 18 EXH (Defendant Exhibit 4, presentation
 19 book, marked for identification, as of this
 20 date.)
 21 MR. McKEE: Off the record for a
 22 minute.
 23 (Discussion off the record.)
 24 Q. I'm going to hand you, Ms. Deiss,
 25 what's been marked as Exhibit 4. And I ask you if

1 Deiss
 2 you can identify that.
 3 (Handing document to witness.)
 4 A. Yes.
 5 Q. And what is that?
 6 A. This is a book we prepared for the
 7 client.
 8 Q. And was that given to the client as
 9 part of a presentation?
 10 A. Yes, it is. It was.
 11 Q. And were you at that presentation?
 12 A. Yes, I was.
 13 Q. Was Mr. Corelli at that presentation?
 14 A. Yes, he was.
 15 Q. Was anybody else from Triarch at that
 16 presentation?
 17 A. No.
 18 Q. Where was that presentation held?
 19 A. At Mr. Voronchenko's apartment.
 20 Q. At the apartment in question or some
 21 other place?
 22 A. At the apartment in question.
 23 Q. And so as part of the presentation,
 24 did you and Mr. Corelli and Mr. Voronchenko walk
 25 around the apartment and you explained how each of

1 Deiss
 2 these images fit into how the project was going to
 3 go?
 4 A. Yes.
 5 Q. And the purpose of that was so that
 6 Mr. Voronchenko would have a better idea of how
 7 this project would wind up looking?
 8 A. That's correct.
 9 Q. Okay. When did this particular
 10 presentation occur, roughly?
 11 A. It was the end of January or beginning
 12 of February. End of January sometime.
 13 Q. 2009?
 14 A. 2009, yes.
 15 Q. Yes. And was there a particular
 16 reason why this presentation was requested or
 17 needed?
 18 A. Yes. Mr. Voronchenko needed to be
 19 able to visualize the changes that were going to
 20 occur in the apartment.
 21 Q. Prior to that point in time, had there
 22 been any friction or dispute with either Braverman
 23 or Voronchenko about the direction that the
 24 project was taking?
 25 A. I wouldn't call it friction. I mean,

1 Deiss
 2 they had very unrealistic time requirements.
 3 Q. How about budget, was there ever any
 4 dispute with either Voronchenko or through
 5 Braverman about where the anticipated budget was
 6 going to go on this project?
 7 A. No.
 8 Q. Do you recall ever seeing or getting
 9 an e-mail from Braverman where he threatened to
 10 pull the plug on this whole project because the
 11 budget had ballooned to over \$2 million?
 12 A. I remember seeing an e-mail, yes.
 13 Q. In any of your discussions with
 14 Voronchenko or with Braverman, did you ever talk
 15 about the need to bring the overall scope of the
 16 work down because the budget was getting too high?
 17 A. No. This was shortly before our final
 18 meeting. It was never discussed.
 19 Q. Okay. Was Braverman at this meeting,
 20 this presentation?
 21 A. Yes.
 22 Q. Who else besides the four people that
 23 you just mentioned were there?
 24 A. I don't remember anybody else.
 25 Q. How about any contractors, were any

1 Deiss
 2 contractors brought in to walk around and listen
 3 to this presentation?
 4 A. No.
 5 Q. Did anybody keep minutes of that
 6 meeting?
 7 A. No. I may have some notes, but I'm
 8 not sure.
 9 Q. Well, I'll have some stuff that I'll
 10 show you as we go on. At the time of this
 11 presentation, what was Voronchenko's immediate
 12 response, if any?
 13 A. He liked it very much.
 14 Q. What did he say, if you remember?
 15 A. I don't remember what he said exactly.
 16 Q. Did he -- but you say he liked it.
 17 Did he express -- so he expressed some degree of
 18 satisfaction with the --
 19 A. Yes, he did.
 20 Q. Now, leading up to this Exhibit 3,
 21 which has numerous computer-generated depictions,
 22 some of them are copies, but were those prepared
 23 in anticipation of this final book that we're
 24 looking at, Exhibit 4?
 25 A. Yes, it was. It was a work in

1 Deiss
 2 progress.
 3 Q. And how long did it take to put this
 4 together, this Exhibit 4, from start to finish, do
 5 you think?
 6 A. I don't know exactly. Maybe a week.
 7 Q. Were there numerous iterations of the
 8 different computer-generated images we see here?
 9 A. During the entire process of the work,
 10 yes. Not just to put the book together.
 11 Q. So the book was kind of the
 12 culmination of --
 13 A. Yes.
 14 Q. -- a whole process that had started --
 15 A. Of meetings with the client, changes,
 16 everything.
 17 MR. MANDEL: Please let him finish the
 18 question.
 19 Q. There had been any number of computer
 20 generated images which preceded this, correct?
 21 A. Correct.
 22 Q. And they were refined over time?
 23 A. Yes.
 24 Q. Some of them were refined because the
 25 images themselves maybe didn't meet what you had

1 Deiss
 2 requested from your subconsultant, yes?
 3 A. Yes.
 4 Q. And changes were made, were they not,
 5 because the client wanted changes made, didn't
 6 like a particular color or shade or something like
 7 that?
 8 A. Also because of that.
 9 Q. Yes. When this presentation was made,
 10 did you believe that it was necessary because
 11 there was a chance that you were going to lose
 12 this client?
 13 A. No.
 14 Q. Did you have any indication before
 15 this meeting with Voronchenko that he was in any
 16 way displeased or unhappy with the course this
 17 project was taking?
 18 A. No.
 19 Q. Was there any indication from
 20 Voronchenko prior to that presentation that he was
 21 unhappy with the time it was taking to progress
 22 the project?
 23 A. Yes, he was unhappy with the time.
 24 MR. McKEE: Let's mark this.
 25 EXH (Defendant Exhibit 5, compilation of

1 Deiss
 2 drawings with computer-generated images,
 3 marked for identification, as of this date.)
 4 Q. Ms. Deiss, I'm going to hand you a,
 5 now, larger collection of --
 6 A. Drawings.
 7 Q. -- drawings which were produced to me
 8 and it also includes some of these
 9 computer-generated images we were just looking at.
 10 (Handing document to witness.)
 11 Q. And I'll ask you some questions about
 12 these. Certainly, flip through them to the extent
 13 you need to to respond to any of my questions.
 14 But do you recognize the materials contained in
 15 this collection we've marked as Exhibit 5 as being
 16 the work product of Triarch?
 17 A. Yes, I do.
 18 Q. And the first several pages have more
 19 of these computer-generated images, correct?
 20 A. That's correct.
 21 Q. And then after you get a few pages, we
 22 start to see some floor plans?
 23 A. Yes.
 24 Q. Now, you're at a page, I think you're
 25 about four or five pages in, and it's an

1 Deiss
 2 electrical layout, correct?
 3 A. Correct.
 4 Q. At sheet labeled or marked E?
 5 A. E-1.
 6 Q. Yes, E-1. And do we have a date on
 7 here? December 23?
 8 A. Yes.
 9 Q. Okay. So that date on there, on this
 10 particular sheet, what does that indicate? Is
 11 that the date that this sheet was finalized,
 12 December 23?
 13 A. Um -- that date shows the date that it
 14 was last worked on.
 15 Q. Okay. Now, typically, if you create a
 16 set of design development documents, okay, would
 17 you, if changes were made thereafter, would you
 18 make a notation in this index of changes area?
 19 A. You would do that on construction
 20 documents, not on design development.
 21 Q. So when you're working with design
 22 development, any new iteration or change that you
 23 make will just come out and it will have a new
 24 date down here lower in the title block?
 25 A. Not in design development. If you

1 Deiss
 2 issue a construction -- when you issue
 3 construction documents, which means that are
 4 finalized, then every additional change will be
 5 marked up here (indicating).
 6 Q. I see.
 7 A. In the index of changes.
 8 Q. And that --
 9 A. Before you issue construction
 10 documents, you don't do that. You just -- it's a
 11 work in progress.
 12 Q. I see.
 13 A. Before you officially issue them.
 14 Q. So what we're looking at here, what is
 15 this, is this design development?
 16 A. No, it is a construction document in
 17 progress. We still working on the redlining of
 18 some of the areas. Position of some of the
 19 recessed lights, switching.
 20 Q. Do you recognize the handwriting on
 21 there?
 22 A. No. One of us. Me or Stephen.
 23 Q. Mr. Corelli is a registered architect,
 24 correct?
 25 A. Yes, correct.

1 Deiss
 2 Q. Are there other registered architects
 3 in your office, other than Mr. Corelli?
 4 A. Not right now.
 5 Q. How about in 2008 and 2009, were there
 6 any others?
 7 A. Not registered architects.
 8 Q. You had some graduate architects?
 9 A. Yes.
 10 Q. How about now, do you still have other
 11 graduate architects?
 12 A. Yes.
 13 Q. Other than Mr. Corelli and yourself,
 14 who worked specifically on any of the floor plans?
 15 A. One architect in my office, Aaron
 16 Boucher.
 17 Q. Mr. Boucher, is he still employed?
 18 A. No, he's not.
 19 Q. Do you know where he is, where he's
 20 currently employed?
 21 A. No, I don't.
 22 Q. This is a detailed fireplace, is that
 23 what that is?
 24 A. Yes. But this is a different project.
 25 Q. Oh, this is not --

1 Deiss
 2 A. This is not the project. Must have
 3 gotten in there somehow.
 4 Q. I see. When you do a project --
 5 A. Yes.
 6 Q. -- do you sometimes incorporate
 7 elements that may have been used on other
 8 projects --
 9 A. No.
 10 Q. -- since it's on a computer, you bring
 11 it in, a typical detail or something?
 12 Do you understand what I'm asking?
 13 A. Typical details, maybe.
 14 Q. For instance, we're looking at a sheet
 15 which is designated as A-15. It has a date of
 16 November 14.
 17 A. Yes.
 18 Q. Given that date, would this be design
 19 development?
 20 A. No, this is a construction document.
 21 Q. It's a construction document. Okay.
 22 It says, "Typical wall detail." Is that the type
 23 of detail you would incorporate from another
 24 project you might have prepared?
 25 A. No. It says "typical" because it's

1 Deiss
 2 typical throughout the room.
 3 Q. Yes. But if you have the type of
 4 detail that's already been generated in connection
 5 with another project, and it's going to be the
 6 same one you employ here, do you incorporate that
 7 into your plans? Or do you always generate
 8 something new?
 9 A. Mostly we generate new details. All
 10 of our projects are different.
 11 That's design development.
 12 Q. As we get to the back of this
 13 collection, we start to see some different --
 14 here's a floor plan that's actually loose.
 15 A. That is something that is not from us.
 16 MR. McKEE: Let's mark this as
 17 Exhibit 6.
 18 EXH (Defendant Exhibit 6, single-page
 19 floor plan in color dated 10/14/08, marked
 20 for identification, as of this date.)
 21 Q. This is an eight-and-a-half-by-eleven
 22 floor plan that --
 23 MR. ISRAEL: Do you have a copy for
 24 me?
 25 MR. McKEE: What?

1 Deiss
 2 MR. ISRAEL: Do you have another copy
 3 for me?
 4 MR. McKEE: No.
 5 MR. ISRAEL: You don't have copies of
 6 anything?
 7 MR. McKEE: You got a copy of one
 8 exhibit, the contract.
 9 MR. ISRAEL: That was very generous of
 10 you. Can I see these documents before you
 11 pass them to the witness so I can have an
 12 idea what you're talking about?
 13 MR. McKEE: Yes, just a second. Let
 14 me describe it.
 15 We've marked as Exhibit 6 a
 16 single-page floor plan in color, red walls,
 17 with colors for different details which came
 18 out of this larger collection.
 19 (Document passed to counsel.)
 20 A. Schematic design.
 21 Q. Now, that sheet happened to fall out
 22 of a portion of this larger Exhibit 5. It says,
 23 "Private residence," it just says, "Floor plan."
 24 It appears to be dated 10/14/08.
 25 A. Yes.

1 Deiss
 2 Q. All right. And you're looking at this
 3 drawing and you're saying that's schematic design?
 4 A. Yes.
 5 Q. What constitutes -- it's also
 6 designated as sheet 1. How do you know that's
 7 schematic design as opposed to design development?
 8 A. Because it's still dealing mostly with
 9 the space planning issues in the apartment.
 10 Q. Now, this separate document that fell
 11 out, that we've marked as Exhibit 6, do you know
 12 where that originated from?
 13 A. No, I don't.
 14 Q. Did you ever hear --
 15 A. May --
 16 Q. Yes.
 17 A. -- it doesn't look like it's from our
 18 office but I'm not sure.
 19 Q. Now, it doesn't say Garth Hayden on
 20 it, does it?
 21 A. I can't read this.
 22 Q. It's in yellow, which is difficult,
 23 but it says "Park Avenue below," and the other
 24 writing says, "60th Street below."
 25 So Garth Hayden's name is not on

1 Deiss
 2 there, correct?
 3 A. I don't see it.
 4 Q. When you said earlier that you'd
 5 gotten two eight-and-a-half-by-eleven floor plans
 6 which you said came from Garth Hayden, his name
 7 was actually on it?
 8 A. Yes.
 9 Q. Was it a title block that said Garth
 10 Hayden?
 11 A. No, it was -- no. It was just
 12 somewhere on the drawing. Garth Hayden
 13 Architects.
 14 Q. And if I recall correctly, you said it
 15 shows existing conditions and --
 16 A. Proposed.
 17 Q. -- proposed reconfiguration of the
 18 foyer. What do you recall it showing? Let me ask
 19 that.
 20 A. Existing conditions in one, and the
 21 other one had some reconfigurations of the foyer,
 22 maybe some other doors were moved. I don't
 23 remember exactly.
 24 Q. But it wasn't as detailed as that set
 25 of DOB plans?

1 Deiss
 2 A. Not at all. It had no measurements.
 3 Q. And did it show that degree of detail
 4 as to location of closets for the master bedroom
 5 and movement --
 6 A. It did.
 7 Q. Oh, it did. Okay. So that
 8 eight-and-a-half-by-eleven that you got from Garth
 9 Hayden had the same type of details that were on
 10 sheet A-2?
 11 A. No. But it showed the position of
 12 elements in the apartment.
 13 Q. Now, I'll pull it back out if you need
 14 me to. But would you agree with me that what
 15 Garth Hayden showed on his DOB set of plans from
 16 June of 2008 is different than what we see here?
 17 A. Yes.
 18 Q. Okay. And in fact, this diagram or
 19 floor plan shows a kind of -- I don't know what it
 20 shows, actually. It seems to highlight the area
 21 between the elevator hallway and into the foyer.
 22 A. Yes.
 23 Q. But it doesn't show an opening into
 24 the bedroom number three or anything like that.
 25 A. No.

1 Deiss
 2 Q. And you have no idea who provided
 3 this?
 4 A. I don't.
 5 Q. And you don't remember being given it
 6 by either Voronchenko or Braverman or anybody
 7 else?
 8 A. No.
 9 Q. And here's a document, sheet A-15
 10 again, which was dated November 14. Would you say
 11 that that's a construction document or design
 12 development?
 13 A. Yes, it is construction.
 14 MR. ISRAEL: Can I see the last
 15 exhibit? Are you using it right now?
 16 (Document passed to counsel.)
 17 Q. Here's a document entitled -- there's
 18 no date and no sheet on it, it just says, "Private
 19 residence." It appears to depict maybe the living
 20 room walls --
 21 A. Yes.
 22 Q. -- the two windows.
 23 A. Correct.
 24 Q. Would you call that schematic design?
 25 A. That's between schematic design and

1 Deiss
 2 design development.
 3 Q. What differentiates the two?
 4 A. Sometimes not much, simply the scale.
 5 Schematic design is usually on a smaller scale
 6 like a quarter of an inch. This is half an inch
 7 scale. But it's still put in there.
 8 Q. Now, here, I've opened to a page
 9 within Exhibit 5, and it actually has a block,
 10 "Garth Hayden Architect," see?
 11 A. Yes.
 12 Q. Do you remember seeing this before?
 13 A. Yes. Probably. I don't remember
 14 actually, but I probably have seen it. I think
 15 this is the existing condition. Oh no, there --
 16 Q. It's entitled "Proposed Conditions."
 17 A. Proposed. There are some
 18 modifications here.
 19 Q. Now, looking at this, let's turn it
 20 back --
 21 MR. ISRAEL: Could you just put a
 22 tab -- put a tab on this so we know what
 23 date you're talking about on the record?
 24 MR. McKEE: Okay.
 25 Q. Now, would you agree with me -- excuse

1 Deiss
 2 me, and I can certainly pull out the DOB set from
 3 Garth Hayden we looked at before -- would you
 4 agree with me that the configuration of the
 5 elevator access and foyer is different than what
 6 was shown on Garth Hayden's DOB set?
 7 A. In which one, on the amended one or on
 8 the previous one?
 9 Q. The only one I've shown you today,
 10 which is the original June 2008 set.
 11 A. I have to see it again.
 12 Q. Yes.
 13 A. To see if that's different.
 14 (Document placed before the witness.)
 15 Q. So I've taken out from Exhibit 1 of
 16 today's date sheet A-2 entitled, "Construction
 17 Plan," and you'd agree with me, wouldn't you, that
 18 the layout of the foyer as shown on this
 19 construction plan is --
 20 A. Differently than here, yes.
 21 Q. -- it's different than what we see
 22 here on this subpart, Exhibit 5.
 23 MR. McKEE: We're going to mark that
 24 page as Exhibit 5-A.
 25 EXH (Defendant Exhibit 5A, page from

1 Deiss
 2 Exhibit 5, above, with title block reading
 3 "Garth Hayden Architect", marked for
 4 identification, as of this date.)
 5 MR. ISRAEL: Let's agree on the record
 6 or just stipulate that the discussion that
 7 we've been having about a page in that
 8 document, in Exhibit number 5, has just been
 9 marked 5-A and that is in fact the page that
 10 has just been the subject of discussion, do
 11 we agree to that, everyone?
 12 MR. McKEE: Sure.
 13 THE WITNESS: Yes.
 14 MR. MANDEL: Yes.
 15 MR. ISRAEL: Okay, good.
 16 Q. What did you do with Garth Hayden's
 17 one or two drawings, if anything, as it relates to
 18 Triarch's work?
 19 A. We may have used the existing
 20 conditions to go to the apartment and measure
 21 everything because we needed to have precise
 22 measured drawings in order to use them for our
 23 documents.
 24 Q. And even if you had gone to the DOB
 25 and obtained Garth Hayden's plans, which were on

1 Deiss
 2 file and approved by the DOB, you would have gone
 3 and you would have measured yourself anyway?
 4 A. Yes, that's what you do.
 5 Q. That's only prudent.
 6 A. Yes.
 7 Q. Now, when this came into Triarch's
 8 possession, what's been marked as Exhibit 5-A,
 9 what, if anything, was Triarch told about Garth
 10 Hayden's work to date?
 11 A. We were told that since the plans that
 12 had been filed and approved by the Department of
 13 Buildings and approved by the management of the
 14 building were done, we should not go too far away
 15 from what he had done in order to not have to go
 16 through the same process again.
 17 Q. Behind that Garth Hayden drawing, we
 18 see much more primitive sketches. This would be
 19 schematic design?
 20 A. Yes.
 21 Q. And it just roughly shows some
 22 furniture layout in the spaces, correct?
 23 A. Um-hum, correct.
 24 Q. Would you still consider this to be
 25 schematic design or is that design development --

1 Deiss
 2 A. Correct.
 3 Q. And the drawings, the details are kind
 4 of in blue, correct?
 5 A. Correct.
 6 Q. This is 4-B, more design development?
 7 A. Correct.
 8 Q. 5-B, this is the library, correct?
 9 A. Correct.
 10 Q. Towards the back, we again have an
 11 occasional computer-generated image, correct?
 12 A. Correct.
 13 Q. Towards the very rear, we get into
 14 some more -- these look like pictures, yes?
 15 A. Yes.
 16 Q. These are not computer-generated.
 17 A. No, they are not.
 18 Q. This is existing conditions.
 19 A. Yes, it is.
 20 Q. This would be the kitchen?
 21 A. Yes.
 22 Q. We're looking at? It has kind of a
 23 cheetah animal motive? That was from the prior
 24 owner, to your understanding?
 25 A. No.

1 Deiss
 2 A. Schematic design.
 3 Q. And the document is entitled, "Floor
 4 Plan, Sheet 1," and it's got a date of 10/14/08.
 5 And it has no measurements, correct?
 6 A. No. But it's to scale. Which means
 7 you can measure on the drawing.
 8 Q. And that is followed by a reflected
 9 ceiling plan of the same date? Yes?
 10 A. Yes.
 11 Q. And your foyer plan is different than
 12 what was shown on Exhibit 5-A --
 13 A. Yes, it's --
 14 Q. -- Garth Hayden's --
 15 A. -- very different.
 16 Q. It's also different than what we saw
 17 on Exhibit 1.
 18 A. Correct.
 19 Q. 'Cause Hayden, his plan for the foyer
 20 was to basically open it entirely up to the
 21 elevator, correct?
 22 A. Correct.
 23 Q. We've now turned a page and we're on
 24 sheet 3 of the same date, and that's still design
 25 development, correct?

1 Deiss
 2 Q. No?
 3 A. No, it's --
 4 Q. This is a different project?
 5 A. No, it's the same project. It's what
 6 is there right now.
 7 Q. It's still there?
 8 A. Well --
 9 Q. As far as you know.
 10 A. I don't know.
 11 Q. Well, do you know when the
 12 Voronchenkos bought this apartment?
 13 A. No.
 14 Q. To your understanding, had these
 15 cabinets preexisting their purchase of the
 16 apartment?
 17 A. Yes.
 18 Q. To your understanding, had the cheetah
 19 motif preexisted their --
 20 A. I don't know.
 21 Q. -- purchase? You don't know?
 22 A. I don't know.
 23 Q. Okay. And the -- is that -- is that a
 24 formica countertop or is that stone?
 25 A. That is stone.

1 Deiss
 2 Q. It is stone. Okay. Again, closer to
 3 the rear, we see a computer-generated image of the
 4 master bedroom, correct?
 5 A. Correct.
 6 Q. There's handwriting on there. Any
 7 idea whose it is?
 8 A. It's my handwriting.
 9 Q. Okay. And do you know why you had
 10 this handwriting on here? Why you added these
 11 comments?
 12 A. Yes, I was making comments and
 13 corrections that had to be picked up by my people
 14 in the office to correct the images.
 15 Q. Your people in the office, that's your
 16 subconsultants or --
 17 A. No, my staff.
 18 Q. Okay. Who was the lead on this for
 19 Triarch?
 20 A. I was.
 21 Q. Who had more day-to-day involvement on
 22 this project, you or Mr. Corelli?
 23 A. I did.
 24 Q. Here's another computer-generated
 25 depiction of the master bedroom; is that more of

1 Deiss
 2 your handwriting?
 3 A. Yes, it is.
 4 Q. For the same purpose?
 5 A. Yes.
 6 Q. Again, this is a different depiction
 7 of the master bedroom?
 8 A. Correct.
 9 Q. Do you know whether this depiction
 10 with this kind of pattern -- what would you call
 11 that pattern?
 12 A. Leaf.
 13 Q. Leaf. Okay. This leaf pattern, was
 14 that ever presented to Voronchenko?
 15 A. Yes, it was.
 16 Q. What did he think of it?
 17 A. He didn't like it.
 18 Q. Okay. Was he more in keeping with
 19 this, the white?
 20 A. Very much.
 21 (Continued on following page.)
 22
 23
 24
 25

1 Deiss
 2 Q. We're looking at a depiction of the
 3 dining room, I believe?
 4 A. Yes.
 5 Q. And a set of built-in tables?
 6 A. It's also an Art Deco console table.
 7 Q. And the handwriting on here in red, is
 8 that yours?
 9 A. No, that is Aaron Boucher.
 10 MR. MANDEL: Let's go off the record
 11 for a second.
 12 (Discussion off the record.)
 13 (Luncheon recess: 12:02 p.m.)
 14
 15
 16
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 25

1
 2 AFTERNOON SESSION
 3 (12:27 p.m.)
 4 MICHAELA DEISS, having been
 5 previously sworn, resumed the stand and
 6 testified further as follows:
 7 MR. MANDEL: While we were off the
 8 record, there were a couple of conversations
 9 this morning that should be memorialized.
 10 Although this deposition has been on
 11 the calendar for approximately a month,
 12 Mr. Israel apparently had two reasons he
 13 needed to leave here today during the day.
 14 He left for approximately an hour this
 15 morning. I don't know why he left this
 16 morning. If he told me, I've forgotten, and
 17 he said this afternoon he has a court
 18 appearance in the Southern District before
 19 Judge Kaplan at 3 o'clock. He said he
 20 expected to be back here within an hour of
 21 that. I have asked -- well, let me back up
 22 a little bit.
 23 The defendants amongst themselves
 24 somehow decided that Garth Hayden's counsel
 25 would go first and that Mr. Voronchenko and

1 Deiss
2 Medallion's counsel would go second.
3 I've asked Mr. McKee to accommodate
4 Mr. Israel's schedule and to permit
5 Mr. Israel to begin his questioning now. He
6 has indicated it would take two to three
7 hours to get his questioning done. He could
8 get some of it done up until 2:30 when he
9 needs to leave for his 3 o'clock appearance.
10 And then he would have an hour-and-a-half
11 when he got back at 4 o'clock to complete
12 his questioning and we could use that hour
13 or so while he was gone for Mr. McKee to
14 finish his questioning. But Mr. McKee has
15 declined to do that.
16 Mr. Israel has also indicated he would
17 refuse to do that even if Mr. McKee had
18 agreed to accommodate him. I understand
19 that the scheduled appearance this afternoon
20 that Mr. Israel has was scheduled only two
21 days ago. As far as I know, he didn't ask
22 the court to adjourn that or schedule that
23 at some other time. Unfortunately, I am
24 unable to continue after 5:30 today, which I
25 told counsel early in the week, and that's

1 Deiss
2 exactly why I proposed we start at nine a.m.
3 and we were here a few minutes before nine
4 to make sure we started promptly.
5 Mr. Israel, I'm sure, will have some
6 things to say but he has asked for us to
7 continue on another day. And I have
8 indicated that that simply isn't a
9 reasonable request, to leave the witness
10 sitting here for an hour waiting for him to
11 return only so that he can then continue his
12 deposition on another day.
13 It may be Mr. Israel is really
14 motivated by the fact this morning I learned
15 that he had not bothered to obtain the
16 documents in this case. Those documents
17 were made available to all the defendants
18 months ago. Garth Hayden's counsel took the
19 documents, copied the documents, and
20 retained a copy for himself. It appears
21 that Mr. Voronchenko's counsel and
22 Medallion's counsel didn't have the
23 documents that were produced by my client,
24 and that's been the subject of some
25 discussion on the record today as well.

1 Deiss
2 MR. McKEE: Can I go first?
3 MR. ISRAEL: No, let me go --
4 MR. McKEE: Yeah, but I'm lead on
5 this, so --
6 MR. ISRAEL: This is the thing that,
7 what you just said is false. We didn't take
8 a break this morning when I took my break.
9 My associate stayed here. We didn't even
10 take a break. So that's false.
11 Judge Kaplan ordered me to be in court
12 this afternoon. I invited you to call Judge
13 Kaplan and tell him that you disagree with
14 his order and that I should continue with
15 the deposition, but you declined to do that.
16 In fact, you still have two hours if you'd
17 like to call the judge now and tell him that
18 it's more important that I stay in this
19 deposition because your client has to leave
20 at five today and you refused to product
21 your witness on another day, even though
22 you're the plaintiff in a frivolous lawsuit.
23 You're welcome to give him a call, but
24 we're going to continue the deposition, and
25 we'll do it as long as -- however is

1 Deiss
2 necessary, so that I get the full time
3 that's allotted to my client under the
4 Federal Rules of Civil Procedure.
5 Now you can go, Wes.
6 MR. McKEE: Thank you. Well, just so
7 we're clear, as far as the order of priority
8 of depositions or who's taking the
9 deposition, I'll just remind counsel that I
10 was the only attorney to issue deposition
11 notices and the only attorney to really
12 pursue discovery within the original time
13 frame established by the court.
14 So the fact that I'm taking the lead
15 on this deposition should come as no
16 surprise, notwithstanding the fact that my
17 client is the third named defendant.
18 Secondly, my client is a design
19 professional. He's been sued for copyright
20 infringement. This is not something that is
21 normal in the course of even somebody who's
22 a busy design professional, who might get
23 dragged into a claim of negligence or breach
24 of contract. We're basically being accused
25 of stealing somebody else's work product.

1 Deiss
2 So the fact that I go first and I want
3 to complete my deposition should come as no
4 surprise to anyone. It's not a question of
5 me looking to be uncooperative with either
6 you or your client or even Mr. Israel's
7 schedule. It's a question of who, which out
8 of the defendants here probably has their
9 nose bent out, more out of shape than
10 anybody else; and I would suggest that that
11 would be my client, who's never been hauled
12 in for this type of claim before. And
13 that's why we are where we are.
14 So my intention is to go forward and
15 complete my deposition. Mr. Israel is going
16 to send his associate, who can sit in on
17 this while I go forward, and I'll complete
18 my questioning today for sure. And it's
19 unfortunate, but we may have to reconvene
20 for a couple of hours so Israel can get his
21 questions in, too.
22 MR. MANDEL: I would just like to
23 respond to two points. First, I don't think
24 I said earlier today that we took a break as
25 a result of Mr. Israel's absence this

1 Deiss
2 morning. But if I did say that, Mr. Israel
3 is correct, we did not take any break as a
4 result of his absence. I was noting that
5 only --
6 MR. ISRAEL: Then why did you mention
7 it?
8 MR. MANDEL: -- he was absent for
9 approximately an hour.
10 MR. ISRAEL: Why did you mention it?
11 MR. MANDEL: He did is have an
12 associate, someone who was introduced as an
13 associate here who may or may not be
14 licensed to practice law, it's not clear to
15 me. She was of course welcome to attend.
16 The only other thing I would say is,
17 I'm a little surprised that Mr. McKee has
18 not accommodated the witness and Mr. Israel
19 by agreeing to rearrange some of the
20 questioning this afternoon. We have made a
21 number of accommodations to Mr. McKee and
22 his client. The deposition schedule was set
23 and Mr. McKee then decided that he should be
24 able to depose the Plaintiff's witnesses
25 first because he believed he was entitled to

1 Deiss
2 some sort of priority, which is a concept
3 that may exist under state law but certainly
4 does not exist under federal law.
5 Simply out of deference to
6 accommodating him, I was happy to rearrange
7 the schedule at his request, and yesterday
8 he asked me to bring documents, which, you
9 know, the day before the deposition, he
10 asked us to pull together some expensive and
11 difficult-to-print construction drawings,
12 which we were more than happy to do for him
13 because the request was entirely reasonable.
14 MR. McKEE: Okay, so the request --
15 MR. ISRAEL: You didn't give me copies
16 of those documents.
17 MR. MANDEL: All of the documents have
18 been made available --
19 MR. ISRAEL: You said you made copies
20 for one of the defendants and not the
21 others. Why is that? How can I even ask my
22 questions when you haven't even given me a
23 production that you gave to the other
24 defendant? Is there some reason you don't
25 like my client as much as you like

1 Deiss
2 Mr. Hayden? Where are the documents?
3 MR. MANDEL: All the documents have
4 been produced to all the parties.
5 MR. ISRAEL: How come I don't have
6 them?
7 MR. MANDEL: You failed when they were
8 made available to you to come and pick them
9 up. Apparently based on the discussion we
10 had this morning, you made zero efforts to
11 obtain any of the Plaintiffs' documents
12 until this morning when you said you'd have
13 to at some point in the future ask
14 Mr. McKee --
15 MR. ISRAEL: You just said you gave
16 copies to Mr. --
17 MR. MANDEL: I did not say I gave
18 documents to Mr. McKee yesterday.
19 MR. ISRAEL: Okay.
20 MR. McKEE: Interesting exchange.
21 Okay. Speaking of the documents, we'll go
22 back to the productive part of this.
23 Let's mark this as 7.
24 EXH (Defendant Exhibit 7, December 23,
25 2008 preliminary issue set, marked for

1 Deiss
 2 identification, as of this date.)
 3 MR. McKEE: And we will call these
 4 December 23, 2008 preliminary issue set.
 5 EXAMINATION (Cont'd.)
 6 BY MR. McKEE:
 7 Q. Now, before we get into this, when you
 8 were first retained, did you receive any drawings,
 9 plans, schematics, anything from Jendretzki
 10 Architecture and Planning Consultants?
 11 A. No, not to my recollection.
 12 Q. Are you familiar with an individual by
 13 the name of Pablo Jendretzki?
 14 A. No.
 15 Q. Were you presented with a set of
 16 plans, schematics, design development drawings or
 17 construction drawings related to any of the other
 18 apartments located in this building?
 19 A. No.
 20 Q. Were you told by any of your clients,
 21 either Braverman or Mr. Voronchenko directly, that
 22 they had originally consulted with an architect by
 23 the name of Jendretzki, about doing this project?
 24 A. No. I was told that they had
 25 consulted with -- hired a number of different

1 Deiss
 2 architects for the same project. But I don't
 3 remember the names.
 4 Q. Okay. So you don't remember any of
 5 the names of any of the architects who may have
 6 been hired before you.
 7 A. No.
 8 Q. Correct? How about any designers?
 9 Were you ever told by either Braverman or
 10 Mr. Voronchenko directly that they had retained or
 11 were working with some designers?
 12 A. Yes.
 13 Q. And in fact, you had some
 14 correspondence with various designers, correct,
 15 during the course of the project?
 16 A. We had correspondence with Garth
 17 Hayden, maybe. But I don't remember having
 18 conference with other designers.
 19 Q. Do you recall having correspondence
 20 with Garth Hayden?
 21 A. No, I'm not. I said we might have.
 22 But --
 23 Q. Okay --
 24 A. That's the only name that I remember.
 25 Q. Let me be clear with my question.

1 Deiss
 2 A. Yeah.
 3 Q. All right? Because at this point I'm
 4 not asking you to guess, particularly since you're
 5 alleging that Mr. Hayden copied your work.
 6 A. Um-hum.
 7 Q. Did you ever have any direct
 8 communications with Garth Hayden, you personally?
 9 A. Direct, no.
 10 Q. To your knowledge, did Triarch,
 11 anybody from Triarch, have any direct
 12 communications with Garth Hayden?
 13 A. I don't know.
 14 Q. Okay. You're unaware of any? You
 15 don't know of any, do you?
 16 A. I don't know. I don't remember. I
 17 don't know and I don't remember.
 18 MR. MANDEL: Sitting here today, are
 19 you aware of any communications that anyone
 20 at Triarch had with anyone at Garth Hayden?
 21 THE WITNESS: No, I'm not aware of it.
 22 Q. Okay, thank you. During your
 23 involvement in the project, did you ever hear of
 24 an individual by the name of Pepe Calderan?
 25 A. Yes.

1 Deiss
 2 Q. You've heard of Pepe Calderan.
 3 A. Pepe.
 4 Q. You've heard of Pepe?
 5 A. Yes.
 6 Q. Did you receive any materials from
 7 Pepe Calderan?
 8 A. No.
 9 Q. In what context did you hear of Pepe
 10 Calderan?
 11 A. In the beginning, at one of our
 12 initial meetings, his name was mentioned by
 13 Mr. Voronchenko or Garry.
 14 Q. What did they say about him?
 15 A. Said that it was someone that had
 16 worked on the project.
 17 Q. What did they say that he had done?
 18 A. Didn't specifically say anything else.
 19 Q. How about somebody by the name of
 20 Philip? Do you recall corresponding at all with
 21 anybody by the name of Philip?
 22 A. Yes.
 23 Q. And did you know Philip's last name to
 24 be Vuckovic?
 25 A. No.

1 Deiss
 2 Q. But you did deal with somebody named
 3 Philip?
 4 A. At some point. He was requesting our
 5 drawings.
 6 Q. Yes. Did you know, do you know who
 7 Philip was associated with?
 8 A. Yes.
 9 Q. Who?
 10 A. Mr. Voronchenko.
 11 Q. No, do you know what company he was
 12 affiliated with?
 13 A. No.
 14 Q. Do you know where he was located?
 15 A. No.
 16 Q. Physically located.
 17 A. No. I assume in Russia. But I don't
 18 know.
 19 Q. Let me show you these drawings which
 20 have been marked as Exhibit 7. Do you recognize
 21 this set of drawings, documents?
 22 A. Yes.
 23 Q. And what is this set of documents?
 24 A. Documents issued by our office, I
 25 assume.

1 Deiss
 2 Q. And what are they? What do they
 3 represent?
 4 A. Construction documents.
 5 Q. And what do you mean by "construction
 6 documents"?
 7 A. Documents that should allow a
 8 contractor to bid on a project.
 9 Q. And the date of December 23, 2008,
 10 that's when these were created?
 11 A. That's what it says on the drawings.
 12 Q. Well, that's the date on there. I'm
 13 asking you if that's what that represents. Is
 14 that when these were created, December 23, 2008?
 15 A. Yes, I imagine yes.
 16 Q. Okay. And as you sit here today, is
 17 it your position that these are your construction
 18 set of drawings?
 19 A. Yes.
 20 Q. Now, when you issued these, what
 21 distinguishes these from your design development
 22 drawings? What's the distinction?
 23 A. They are more detailed, and they have
 24 dimensions and descriptions on them. That's just
 25 one thing. In addition to that?

1 Deiss
 2 Q. Now, as of December 23, 2008, had
 3 Mr. Voronchenko or Mr. Braverman come to a final
 4 conclusion as to what they wanted by way of
 5 materials, the visual aspect of it, specific
 6 details, configuration of any new partitions, had
 7 they come to a conclusion as to, this is what they
 8 wanted it to look like?
 9 A. Well, most of what had to do with the
 10 construction part of it, they had. Some of the
 11 materials were not, certainly not within what, or
 12 may not have been within what Mr. Voronchenko
 13 wanted.
 14 Q. So what was it that led you at Triarch
 15 to decide to issue your construction set of
 16 drawings if you were not a hundred percent
 17 satisfied or certain that Voronchenko and
 18 Braverman were done making changes?
 19 A. First of all, this says, "Preliminary
 20 Issue Set." It was a work in progress. Because
 21 in order to produce the renderings that
 22 Mr. Voronchenko requested, you had to go all the
 23 way -- you had to go all the way to construction
 24 documents to be able to visualize them the way we
 25 did them.

1 Deiss
 2 Q. Why is that?
 3 A. Because that's the way you do
 4 renderings. That's the process you go through.
 5 In order to have a 3-D rendering, you have to have
 6 the project in place. And that's why every time
 7 there were modifications or changes, additional
 8 changes, ongoing changes, we had to redo a whole
 9 set of documents.
 10 You cannot do an accurate 3-D
 11 rendering with preliminary sketches or something.
 12 Q. Well --
 13 A. And since --
 14 Q. -- if Voronchenko was not completely
 15 done making any changes or modifications by that
 16 point in time, why would you then go forward and
 17 prepare these?
 18 A. Because I needed them to give him the
 19 renderings. I needed -- and he wanted to have
 20 everything done as fast as possible.
 21 Q. So --
 22 A. It was the only way to do it.
 23 Q. So these drawings were issued
 24 primarily so that you could then go forward with
 25 preparation of the renderings?

1 Deiss
 2 A. And at the same time, be able to build
 3 the project, yes.
 4 Q. Okay. Did you take a permit out? Was
 5 a permit pulled on this?
 6 A. We -- a permit is being pulled by the
 7 contractor.
 8 Q. Yes. Was a contractor retained by
 9 this point in time?
 10 A. No. What happened is, we had a
 11 meeting with Mr. Voronchenko, gave him all the
 12 documents, gave him the book, gave him boxes with
 13 materials, and then he disappeared.
 14 Q. Okay. And that meeting occurred in
 15 February?
 16 A. I don't remember the exact date of the
 17 meeting.
 18 Q. I didn't say date. But the month. I
 19 think earlier you showed me, we were looking at
 20 that one brochure and you said that was related to
 21 a February 2009 meeting. Is that what we're
 22 talking about?
 23 A. End of January or beginning of
 24 February. I don't remember exactly the date. We
 25 can certainly look it up somewhere.

1 Deiss
 2 Q. We may come across it. So you had
 3 that meeting in late January or early February
 4 2009. And it was at that meeting that you
 5 presented all those renderings, correct?
 6 A. Yes.
 7 Q. And to do the renderings, you needed
 8 the plans, correct?
 9 A. Yes.
 10 Q. Okay. So at this time that you were
 11 terminated, or the contractual relationship was
 12 ended, the design was still subject to change? In
 13 other words, Voronchenko had not given his final
 14 approval?
 15 A. Um -- parts of it. Or part of it.
 16 Q. Part of it.
 17 A. Not his final approval.
 18 Q. What parts did and what parts did not
 19 have his final approval?
 20 A. From what I remember, maybe the master
 21 bedroom did not have his final approval because he
 22 hadn't seen the final images yet.
 23 Q. And what was it about the master
 24 bedroom that would not have received his final
 25 approval?

1 Deiss
 2 A. Could be anything. It could be the
 3 lamp on the night table.
 4 Q. These plans that we're looking at
 5 here, do they specify such things as lamps on
 6 tables and bedding or anything like that?
 7 A. No, they don't.
 8 Q. All right. Were you going to prepare
 9 a separate book or presentation regarding
 10 suggested --
 11 A. No.
 12 Q. -- furniture and fixture --
 13 A. No, we were not asked to do that.
 14 Q. Okay. So if he was possibly not
 15 settled on a lamp or a table for the bedroom, how
 16 would that impact the drawings themselves?
 17 A. It wouldn't impact the drawings. It
 18 was his personal way of dealing with a project.
 19 He would not approve it if he didn't like the
 20 bedspread or the curtain or something that was
 21 irrelevant to the project.
 22 Q. But as far as you're concerned, this
 23 set of drawings, these would be considered the
 24 construction set of drawings?
 25 A. Yes.

1 Deiss
 2 Q. And that would include sheet D-1 which
 3 shows the proposed demolition plan?
 4 A. Yes.
 5 Q. So when you had completed what you
 6 considered your construction set of drawings, the
 7 demolition plan called for this opening of the --
 8 what I'll call the elevator hallway, you were
 9 going to make a larger opening?
 10 A. Yes, correct.
 11 Q. And you were going to change the doors
 12 into the dining room?
 13 A. Yes.
 14 Q. But they were going to remain in the
 15 same location, correct?
 16 A. Correct.
 17 Q. And you were going to change the doors
 18 into the bedroom hallway and into this --
 19 A. Correct.
 20 Q. -- what had been the third bedroom?
 21 A. Yes.
 22 Q. And you were going to open up the wall
 23 that separated the third bedroom and the living
 24 room?
 25 A. Correct.

1 Deiss
 2 Q. And you were going to reconfigure the
 3 area around the master bedroom and the closets in
 4 that area, correct?
 5 A. Yes, correct.
 6 Q. And remove this interim doorway in the
 7 bedroom hallway, correct?
 8 A. Remove and replace. This is the demo
 9 plan.
 10 Q. Yes.
 11 A. Again, this is a preliminary issue
 12 set.
 13 Q. What does that mean?
 14 A. It means that it's not a final issue
 15 set until everything is totally approved.
 16 Q. Okay. So at the time this issued,
 17 everything was not totally approved.
 18 A. Not everything was totally approved.
 19 Q. Because if everything had been totally
 20 approved, Voronchenko would have told you, and you
 21 would have issued a final set?
 22 A. Yes.
 23 Q. Would it be called "final set"?
 24 A. Yes.
 25 Q. Would it be called --

1 Deiss
 2 A. And it would have the date of -- the
 3 date of the final revisions, the date of the final
 4 printing.
 5 Q. And that date would be on here where
 6 it says, "Date"?
 7 A. Exactly.
 8 Q. It wouldn't be up here where it says,
 9 "Index of changes."
 10 A. No.
 11 Q. Only if you had your final
 12 construction set of drawings and there was a
 13 subsequent change, then you would list it in the
 14 index of changes.
 15 A. That's correct.
 16 Q. Okay. So a final set of construction
 17 documents was never issued, correct?
 18 A. Correct. This was as final as it
 19 could get.
 20 Q. Before the relationship was
 21 terminated.
 22 A. Yes.
 23 Q. Yes. Now, turning the page, sheet A-1
 24 follows the demolition, correct?
 25 A. Yes.

1 Deiss
 2 A. No --
 3 Q. Would it be called construction set of
 4 documents?
 5 A. Yeah.
 6 Q. I mean, it would say those words,
 7 "Construction set" --
 8 A. No, it was not say that word -- those
 9 words.
 10 Q. What would it say? Because here --
 11 just let me phrase the question -- here it has a
 12 date and it says "preliminary issue set." Do you
 13 agree with that?
 14 A. Yes.
 15 Q. So now, say you moved beyond this and
 16 everything's approved, Voronchenko has approved
 17 every door, wall, and every other detail that you
 18 think is considered as part of your work. You
 19 would issue an updated or current set of plans?
 20 A. Yes.
 21 Q. And what would it be called, if
 22 anything?
 23 A. This same thing except it would not
 24 say "preliminary issue set."
 25 Q. I see. So those words would be gone.

1 Deiss
 2 Q. A stands for architectural?
 3 A. Yes.
 4 Q. D stands for demolition?
 5 A. Yes.
 6 Q. T stands for title?
 7 A. Yes.
 8 Q. And I think at the very back we have
 9 E, and that would be electrical?
 10 A. Correct.
 11 Q. Okay. Now, looking at sheet A-1, this
 12 is how, as of the time that this preliminary issue
 13 set came out, the area between the elevator
 14 hallway and the foyer was now going to be -- it
 15 was going to have a larger opening than what had
 16 existed and it was going to have a double swing
 17 door here?
 18 A. Yes.
 19 Q. And the overall size of the foyer, was
 20 that changing from the original size? In other
 21 words, the perimeter of the foyer remained the
 22 same?
 23 A. I don't remember. More or less, yes.
 24 I would have to verify if there were changes in
 25 the dimensions.

1 Deiss
 2 Q. Okay. Well, since we're looking at
 3 the plan right here, to the extent you can tell,
 4 does it appear that the four corners of that space
 5 are moving at all, based upon the demolition plan?
 6 A. No, but I can't tell you for sure.
 7 Q. But by glancing at it right now, it
 8 doesn't appear that's changing, does it?
 9 A. It does not.
 10 Q. Now, one of the changes we see in this
 11 area of the foyer is that the hallway, the bedroom
 12 hallway and the entrance into bedroom number 3,
 13 the doors remain, but you're changing the doors,
 14 correct? There's a change in the type of doors?
 15 A. Yes.
 16 Q. It's part of your scope of work,
 17 changing the type of doors?
 18 A. That's correct.
 19 Q. And they have also changed the door
 20 into the closet for bedroom number 3, correct?
 21 That stays, yes?
 22 A. Yes.
 23 Q. And we still have, as you go down the
 24 bedroom hallway, there's still a closet in that
 25 hallway. What changed there is a door, different

1 Deiss
 2 bedroom, the doorway that used to be at the end of
 3 the bedroom hallway is removed, correct?
 4 A. Correct.
 5 Q. So now it continues all the way back
 6 to a new door for the master bedroom.
 7 A. Yes.
 8 Q. And the door to bedroom number two
 9 remains the same, correct?
 10 A. Correct.
 11 Q. In fact, were there any changes
 12 proposed for bedroom number two?
 13 A. No.
 14 Q. Now, looking at the demo plan, which
 15 also shows existing conditions, correct?
 16 A. Yes.
 17 Q. And looking at the master bedroom, one
 18 of the most notable changes would appear to be
 19 that, in your plan, you create a full line of
 20 closets heading down into the master bedroom;
 21 correct?
 22 A. Correct.
 23 Q. And you also reconfigure some of these
 24 closets on either side of the bathroom entryway,
 25 correct?

1 Deiss
 2 door, correct?
 3 A. Correct.
 4 Q. And we also see there was a change in
 5 the elevator hallway. You changed the door that
 6 went from the elevator hallway out into this
 7 kitchen hallway.
 8 A. Yes.
 9 Q. Which services the kitchen and the
 10 service elevator, yes?
 11 A. Yes.
 12 Q. And your plan called, I guess -- does
 13 your plan call for a change to the kitchen door?
 14 Because it's not on the demo plan. But do you
 15 know whether that's a change?
 16 A. Might not -- no, it's not a change.
 17 Q. And the other end of the elevator
 18 hallway, there's still the same door there,
 19 correct?
 20 A. Correct.
 21 Q. In fact, your plan calls more or less
 22 for maintaining a hallway by the elevator,
 23 correct? You step out into a small hallway?
 24 A. Correct.
 25 Q. Now, going down the hall towards the

1 Deiss
 2 A. Correct.
 3 Q. And that entrance into the master
 4 bath, you have a single door?
 5 A. Yes.
 6 Q. And as you go in on the left, to the
 7 left as you went to the bathroom, there's a closet
 8 there?
 9 A. Yes.
 10 Q. And then out in the hallway, again,
 11 flanking either side of the bathroom doorway,
 12 you've created two closets that face the hallway,
 13 correct?
 14 A. Yes.
 15 Q. Preexisting were, there was a small
 16 hallway that led into the bathroom and on either
 17 side there was a larger closet, correct?
 18 A. Correct.
 19 Q. Those were walk-in closets for
 20 clothing?
 21 A. I assume.
 22 Q. Well, given the size of them, would it
 23 appear that they were walk-in closets?
 24 A. It would appear so.
 25 Q. And that space has been, then, made up

1 Deiss
 2 by having this whole wall of closets, correct?
 3 A. Correct.
 4 Q. Now, the demolition plan calls for
 5 keeping the original shower?
 6 A. Yes, it does.
 7 Q. But a new tub and new sinks, correct?
 8 A. Correct.
 9 Q. Your plan called for keeping the same
 10 floor in the dining and living room, called for
 11 refinishing existing floor?
 12 A. Yes. But it has still -- there's
 13 still some changes. I think we were going to
 14 create a new border around the floor.
 15 Q. Some kind of an inlay around the edge?
 16 A. Yes.
 17 Q. Now, you're aware that, in this
 18 lawsuit, that an allegation has been made that the
 19 defendants, and more particularly, Garth Hayden,
 20 violated federal copyright law. Are you aware of
 21 that?
 22 A. Yes.
 23 Q. Now, originally, Triarch brought a
 24 breach of contract claim against Medallion and
 25 Vladimir Voronchenko, correct?

1 Deiss
 2 A. Correct.
 3 Q. And they brought that in state court,
 4 correct?
 5 A. Correct.
 6 Q. Okay. And in that lawsuit, no claim
 7 was made against Garth Hayden, was there?
 8 A. I don't remember.
 9 Q. Okay, fair enough. At some point a
 10 decision was made to bring a complaint in the
 11 United States District Court for the Southern
 12 District of New York alleging a violation of
 13 copyright. Are you aware of that?
 14 A. Yes.
 15 Q. How did you, meaning Triarch, how did
 16 Triarch become aware that their plans had been
 17 infringed?
 18 A. We got a copy of the filed plans from
 19 the Department of Buildings.
 20 Q. What led you to go get a copy of the
 21 plans? Why did you do that?
 22 A. Because I was under the impression
 23 that our project had not been paid for but was in
 24 the process of being built.
 25 Q. Yes. Now, who went and got a copy of

1 Deiss
 2 the plans from the building department?
 3 A. Expediter.
 4 Q. Somebody you used for regular jobs in
 5 the past?
 6 A. Yes.
 7 Q. Called him up and said, "I want you to
 8 go pull the construction set of documents for this
 9 project," correct?
 10 A. Correct.
 11 Q. Okay. Who made that request, you or
 12 somebody else in your office?
 13 A. Either me or Stephen Corelli.
 14 Q. So you don't remember if you made that
 15 request?
 16 A. I made the request to the building
 17 department expediter.
 18 Q. So you made that personal request.
 19 How did you, Triarch, find out that the project
 20 was being built, as you put it, based upon your
 21 plans?
 22 A. I -- I paid a visit to the Tempora
 23 Mobili people in Italy, which is close to my home,
 24 and because I was curious. I had been in touch
 25 with them. They had been requesting over and over

1 Deiss
 2 to see our drawings and to receive our drawings,
 3 and we had started sending them some drawings.
 4 And I talked to them and they actually showed me
 5 what was in the process of being built.
 6 Q. Tempora Mobili?
 7 A. Um-hum.
 8 Q. You were dealing with --
 9 A. Alberto.
 10 Q. Signor Alberto?
 11 A. Yes.
 12 Q. What is your first language?
 13 A. German.
 14 Q. But you also speak Italian.
 15 A. I went to school there, yes.
 16 Q. And when you corresponded with the
 17 folks, Alberto at Tempora Mobile, you corresponded
 18 in Italian, correct?
 19 A. Probably yes. Never know if they
 20 speak English.
 21 Q. Okay. And when was that, that you
 22 went there and you found out that -- well, let me
 23 back up.
 24 So you found out from Alberto or
 25 Tempora Mobili that they were preparing stone for

1 Deiss
 2 what you believed was based upon your plans?
 3 A. I don't remember the date. It was
 4 probably in the same year, 2009. They showed me
 5 the vault of the library that they were in the
 6 process of building. They showed me drawings that
 7 we have a copy of that are fabrication drawings
 8 for the library panels and doors.
 9 Q. So they had drawings that they were
 10 operating off, fabrication drawings. And you have
 11 copies of those?
 12 A. Yes. I have received copies of those
 13 a while ago through our first attorney, I think.
 14 Q. Okay.
 15 RQ MR. McKEE: I don't believe that I've
 16 ever received those. So as we get a
 17 description of what they are on the record,
 18 I'm going to say right now that I am making
 19 a request that they be provided, preferably
 20 by Monday because I think we're supposed to
 21 reconvene with Mr. Corelli. Just to avoid
 22 any problems.
 23 Q. So these drawings that you saw when
 24 your contact over at the marble company was made,
 25 what's the date of those drawings?

1 Deiss
 2 Q. So were you shown a copy of the either
 3 architectural or interior design drawings upon
 4 which Mobili was basing their shop drawings?
 5 A. I was shown, yes.
 6 Q. And whose drawings were they?
 7 A. I don't know who within the company
 8 had prepared the drawings.
 9 Q. I'm not talking about the shop
 10 drawings. But the shop drawings were based upon
 11 somebody else's --
 12 A. No, they didn't show me those
 13 drawings. Whatever drawings they used to prepare
 14 their drawings, they didn't show me. But they
 15 told me that they had our drawings.
 16 Q. That they had your drawings?
 17 A. Yes, but they didn't show them to me.
 18 Q. Is it your understanding that Mobili
 19 was fabricating stone --
 20 A. Cabinetry.
 21 Q. -- sorry, cabinetry. Okay. So they
 22 are not stone.
 23 A. They also do stone. They do
 24 everything.
 25 Q. I see. Cabinetry for the library.

1 Deiss
 2 A. I don't know.
 3 Q. Would you --
 4 A. I can look it up. I don't remember
 5 what the date is on the drawings.
 6 Q. Do you happen to have them here with
 7 you?
 8 A. No, I didn't bring anything.
 9 Q. Okay.
 10 A. Sorry. Are you sure you don't have
 11 them, because -- okay. You would know.
 12 Q. I don't think that I have them. But I
 13 will -- I will look again before Monday. I'm not
 14 going to look now. I just don't remember seeing
 15 them.
 16 Who prepared those drawings? Whose
 17 name or names were on them?
 18 A. Tempora Mobili, maybe Alberto
 19 himself --
 20 Q. So they were shop drawings?
 21 A. They were shop drawings.
 22 Q. So the shop drawings are based upon
 23 somebody's, usually somebody's architectural or
 24 interior design drawings; correct?
 25 A. Exactly, correct.

1 Deiss
 2 A. Yes.
 3 Q. Okay. That's that wall of
 4 bookshelves.
 5 A. Correct. It's the entire room,
 6 actually.
 7 Q. Including the paneling and the
 8 vaulted ceiling.
 9 A. Correct.
 10 Q. So all that cabinetry, all that
 11 woodwork, was being done by Mobili over in Italy,
 12 yes?
 13 A. Correct.
 14 Q. And you saw their shop drawings?
 15 A. I did.
 16 Q. And you have copies of their shop
 17 drawings?
 18 A. I have now copies of the shop
 19 drawings.
 20 Q. You now have but you do not know what
 21 design drawings they were based on.
 22 A. I do not know.
 23 Q. Okay. Were you told whose design
 24 drawings they were based on?
 25 A. Yes.

1 Deiss
 2 Q. And what were you told?
 3 A. They said they based them on our
 4 drawings.
 5 Q. The drawings actually say "Triarch"?
 6 A. Yes.
 7 Q. But again, they didn't show you which
 8 particular sheet or anything like that?
 9 A. No, I did not see anything.
 10 Q. All right. Now, this set of drawings
 11 which we've marked as Exhibit 7 has 18
 12 architectural pages. Can you go to the page --
 13 A. 19.
 14 Q. -- nineteen, I beg your pardon -- can
 15 you go to the page where you think Mobili may have
 16 gotten the design information it needed to do its
 17 shop drawings?
 18 All right, A-11. So we're looking at
 19 sheet A-11. And this is called, "Library
 20 elevations." Okay.
 21 So you were told that they have your
 22 drawings and that they were basing their work on
 23 what we see on this page.
 24 A. Correct.
 25 Q. And we see here -- were they making

1 Deiss
 2 the doors?
 3 A. Yes.
 4 Q. All right. And this is, again, this
 5 is a paneled door and it has leather panels --
 6 A. Metal --
 7 Q. -- and with metal trim around it?
 8 A. Correct.
 9 Q. And metal studs?
 10 A. Um-hum, yes, and a wood frame.
 11 Q. Yes. And on the bottom we see the
 12 bookcases, correct?
 13 A. Correct.
 14 Q. And again, the bottom of the bookcases
 15 have doors on them and those are covered with
 16 leather panels with metal trim and studs?
 17 A. Correct. Of this part of the library,
 18 we have many different versions.
 19 Q. Yes.
 20 A. This is the one that appears in this
 21 document. There are many others.
 22 Q. All right. But this is the set -- let
 23 me ask you this:
 24 Were you involved in the application
 25 and submission to get a copyright on the drawings?

1 Deiss
 2 A. Yes.
 3 Q. Okay. This set of drawings which
 4 we've marked as Exhibit 7, is this the set of
 5 drawings that you claim copyright protection to?
 6 A. I think so. I would have -- I would
 7 have to verify that hundred one percent. I think
 8 so.
 9 Q. How would you verify it?
 10 THE WITNESS: Do you have the set?
 11 MR. MANDEL: I think that -- I can't
 12 answer questions today. But --
 13 THE WITNESS: Okay.
 14 MR. MANDEL: -- but if your answer is
 15 you had asked your lawyer, it sounds like
 16 that might be your answer, then that's how
 17 you would verify it.
 18 THE WITNESS: So?
 19 MR. MANDEL: I'm not going to answer
 20 any questions on the record. They are --
 21 THE WITNESS: Okay.
 22 A. I would have to verify it.
 23 Q. But as you sit here today, you believe
 24 that this is the set of drawings which was filed,
 25 deposited with the Copyright Office?

1 Deiss
 2 A. I believe so. I'm not a hundred
 3 percent sure, but I believe so.
 4 Q. Okay. How often have you -- "you"
 5 meaning Triarch -- copyrighted their design
 6 documents, gone through the effort of actually
 7 submitting them, depositing them with the
 8 Copyright Office?
 9 A. Maybe twice.
 10 Q. That includes this time?
 11 A. Yes.
 12 Q. So maybe one other time?
 13 A. Yes.
 14 Q. Now, you submitted for the copyright
 15 in 2011, if I'm not mistaken, correct?
 16 A. I don't remember the date.
 17 Q. But it was after the lawsuit against
 18 Medallion and Voronchenko for breach of contract
 19 was started, yes?
 20 A. Yes.
 21 Q. And it was after you had gone to Italy
 22 and spoken with Mobili, yes?
 23 A. Yes.
 24 Q. Okay. And you did it because you
 25 thought at that time that your drawings were being

1 Deiss
 2 infringed?
 3 A. Yes.
 4 Q. The other time that you might have
 5 gone to the effort to copyright your drawings, was
 6 that in connection with a time when you assumed or
 7 believed that your drawings were being infringed?
 8 A. Yes.
 9 Q. So as a matter of course, you don't
 10 always copyright them?
 11 A. No.
 12 Q. Or register, I should say. You've
 13 only done that once or twice.
 14 A. You don't need to.
 15 Q. But do you understand you need to do
 16 it in order to bring a copyright claim?
 17 A. Yes.
 18 Q. Now, when you spoke with Alberto or
 19 whoever else you spoke with over at Mobili, did he
 20 specifically reference your drawing of December
 21 23?
 22 A. No.
 23 Q. He just said, "Your drawings"?
 24 A. Yes.
 25 Q. During the course of your dealings

1 Deiss
 2 with Mobili while you were still working on the
 3 job, you had sent them, did you not, smaller
 4 sections to show them what you were intending to
 5 do so they could fabricate the work, correct?
 6 A. I'm not sure.
 7 Q. You don't recall?
 8 A. No.
 9 Q. All right. We may have some e-mails
 10 to that effect.
 11 A. It's possible. I think we sent them
 12 something at some point but I'm not sure what it
 13 was exactly.
 14 Q. Okay. Now, I'm going to what we
 15 marked earlier today as Exhibit 1, which is my
 16 client's original set of documents that he
 17 submitted and got approved back in June of 2008.
 18 And going to sheet A-1, which is
 19 entitled, "Existing Conditions, Demolition Plan,"
 20 what I'd like you to do is, if you can, on the
 21 record, distinguish your D-1, your demolition
 22 plan, from your plans from my client's June 2008
 23 approved plans, if you could distinguish the two.
 24 A. In my plan, we are not demolishing
 25 this entire wall, including the closets here.

1 Deiss
 2 Q. All right. Now, what you're pointing
 3 to was at the Hayden plan. When you say "this
 4 entire wall," you're talking --
 5 A. This area.
 6 Q. -- the entry into the bedroom
 7 hallway --
 8 A. Yes.
 9 Q. -- the shower, the division between
 10 the foyer and the bedroom hallway and bedroom
 11 number 3 --
 12 A. Yes.
 13 Q. -- and Hayden's plan which calls for
 14 basically the complete removal of the wall --
 15 A. Correct.
 16 Q. -- defining the elevator hallway,
 17 correct?
 18 A. Yes.
 19 Q. I think it's called hallway number 1.
 20 A. Um-hum.
 21 Q. You agree with that?
 22 A. I do.
 23 Q. So your plans are different from that
 24 in that respect, correct?
 25 A. Correct.

1 Deiss
 2 Q. How else do your demolition plans, if
 3 at all, differ from what my client shows on
 4 his demolition plans?
 5 A. I think we are demolishing more than
 6 your client does in the bathroom area over here.
 7 Q. The entrance kind of around the
 8 bathroom.
 9 A. Um-hum.
 10 Q. Yes.
 11 A. And we are taking out everything in
 12 the bathroom.
 13 Q. Except the shower.
 14 A. Except the shower. Correct.
 15 Q. So you're replacing the little toilet
 16 room, and that consists of replacing the fixture
 17 and the door.
 18 A. Yes.
 19 Q. And with the tub, you call for removal
 20 of the tub, correct?
 21 A. Yes.
 22 Q. And changing out the vanity, correct?
 23 A. Correct.
 24 Q. And in the Hayden plan, he doesn't
 25 show those changes.

1 Deiss
 2 A. No.
 3 Q. Okay.
 4 A. He's also removing the entire portion
 5 of this wall here (indicating) which we're not
 6 showing in our demo plan.
 7 Q. That's the wall between these two hall
 8 closets for the master bedroom.
 9 A. Correct.
 10 Q. You just show the removal of the
 11 doors.
 12 A. Yes.
 13 Q. Those are the two closets on the north
 14 wall.
 15 A. North side, yes. Yeah, I think that's
 16 pretty much it.
 17 Q. What I'd like to do is go to sheet
 18 A-1. And sheet A-1 of your drawings, Exhibit 7,
 19 and sheet A-2 of Hayden's plans, Exhibit 1, now,
 20 these are both the overall floor plan, correct?
 21 A. Yes, correct.
 22 Q. And looking at these two floor plans,
 23 can you --
 24 A. You know, it's easier if we turn them
 25 around, if you don't mind, because then they face

1 Deiss
 2 the same direction.
 3 Q. Whatever works for you.
 4 A. It's easier for me, too, to walk
 5 through it.
 6 Q. Again, if you can distinguish the two,
 7 how your floor plan, A-1, differs from Garth
 8 Hayden's floor plan, which is A-2.
 9 A. The entire entrance sequence is
 10 different.
 11 Q. What do you mean by "sequence"?
 12 A. Sequence, I mean the foyer, the
 13 hallway number 1 and the entrance.
 14 Q. Yes.
 15 A. And this area here is different. He
 16 has no door here anymore. In is an entirely new
 17 wall. We are actually keeping part of the door
 18 over here.
 19 Q. You're talking about the door into the
 20 hallway.
 21 A. No -- yeah. I mean, this entire --
 22 it's hard to tell like this. This entire area
 23 here is different.
 24 Q. We're talking about this kind of
 25 confluence between the south wall of the foyer?

1 Deiss
 2 A. Well, his south wall now is moved up
 3 to here (indicating). His entire foyer is this.
 4 Q. He's enlarged the foyer.
 5 A. Yes.
 6 Q. He's removed more or less the elevator
 7 hallway.
 8 A. Exactly.
 9 Q. And he's removed part of the bedroom
 10 hallway?
 11 A. Yes. And he's removed the shower part
 12 of the bathroom.
 13 Q. Yes.
 14 A. And shortened this part out of -- out
 15 of the library area.
 16 Q. He, in Hayden's plan, he has a solid
 17 wall between the library and the foyer?
 18 A. Correct.
 19 Q. And off to the side of that, he turned
 20 part of what used to be the hallway into bedroom
 21 number 3, into a hall closet, a coat closet out in
 22 the foyer.
 23 A. Yes.
 24 Q. Okay. How about the new opening
 25 between the bedroom, library and living room? How

1 Deiss
 2 do the two plans differ?
 3 A. They are very similar. I don't know
 4 what he's planing to do with these doors here
 5 because the wall isn't thick enough for sliding
 6 doors, for pocket doors. But the opening is
 7 similar to ours. It's five-foot seven and we have
 8 four-foot something. I can't read.
 9 Q. The way this part of the opening is
 10 drawn on Hayden's plan, doesn't that designate a
 11 sliding door?
 12 A. It -- it designates some kind of
 13 opening here. It could be a sliding door. He
 14 doesn't indicate any doors and the door -- the
 15 wall is too thin to accommodate pocket doors. So
 16 there's some sort of door here.
 17 Q. Okay. How else do these two plans
 18 differ?
 19 A. He is rebuilding this area here
 20 (indicating).
 21 Q. The other closets --
 22 A. This here is rebuilt in a different
 23 way. The closets flanking the bathroom, yes.
 24 Q. Yes.
 25 A. This entire area is different from

1 Deiss
 2 ours.
 3 Q. So he has two closets facing out into
 4 the hallway, and one facing out into the bathroom
 5 hallway, correct?
 6 A. Yes.
 7 Q. And in your plans, you have two
 8 closets facing out into the hallway, and the other
 9 one --
 10 A. Yes, but --
 11 Q. -- you've moved the entry into the
 12 bathroom forward. Correct?
 13 A. Yes. We have. We have increased the
 14 size of the bathroom. And -- I don't know how
 15 much we moved these back. The configuration of
 16 this entire area is different.
 17 Q. So he has three closets and you have
 18 three closets but the relationship of them is
 19 different.
 20 A. Yeah.
 21 Q. Okay. How about on the --
 22 A. The same with the door here. We don't
 23 have the door in the same position that he has it,
 24 this door, this door.
 25 Q. You're talking about the door as you

1 Deiss
 2 floor, correct?
 3 A. Yes.
 4 Q. Can you find the detail for these
 5 windows that we were looking at here, the living
 6 room, on your plan? And we're looking at sheet
 7 A-8.
 8 A. Yes, we are.
 9 Q. And this is for the living room?
 10 A. Yes, it is.
 11 Q. This shows all four walls?
 12 A. Yes, it does.
 13 Q. Okay. Now, Hayden's plan doesn't show
 14 all walls for all rooms, does he?
 15 A. No.
 16 Q. On the top of his plan, he shows the,
 17 I guess it would be the --
 18 A. That's this, it's the same on this one
 19 here (indicating).
 20 Q. Same at the bottom, which is the west
 21 elevation?
 22 A. Yes.
 23 Q. Okay. And how do the two differ?
 24 A. We have wood paneling above the
 25 windows, fluted wood paneling. We have a stone

1 Deiss
 2 come down the bedroom hallway --
 3 A. Yes.
 4 Q. -- directly in front --
 5 A. We have a door at this point.
 6 Q. Yes.
 7 A. He has a door at this point. It's in
 8 a totally different location.
 9 Q. His door runs north-south, yours runs
 10 east-west.
 11 A. Yes.
 12 Q. Okay. And again, as you come down the
 13 right side into the master bedroom, he lines the
 14 wall with closets, correct?
 15 A. Correct.
 16 Q. Would you say that they are
 17 substantially similar?
 18 A. They are similar.
 19 Q. Okay. See any other differences in
 20 bedroom number 2 or bedroom number 4?
 21 A. No. No changes. No -- no work is
 22 being done there.
 23 Q. Okay. Page A-3 of Hayden's plan, we
 24 looked at this earlier. This shows some
 25 elevations as well as a detail for the foyer

1 Deiss
 2 base. We have leather panels with nails, straight
 3 panels, actually, and we have wood -- the same
 4 fluted wood paneling on the top.
 5 We have alabaster glass framed by
 6 metal in the back. We have a soffit.
 7 Q. Yes.
 8 A. That's how they differ.
 9 Q. Okay. And then, looking at here, I'm
 10 upside-down, so I apologize, the middle elevation
 11 on Hayden's plan.
 12 A. This is the middle -- no, wait, this
 13 is the middle elevation. This is ours and this is
 14 Hayden's.
 15 Q. Called the south elevation?
 16 A. Yes.
 17 Q. And again, that's street side with the
 18 two windows?
 19 A. The windows are here. That's the door
 20 to the library.
 21 Q. I see. And on Hayden's elevation
 22 here, he shows a solid core wood sliding pocket
 23 door?
 24 A. Yes, we have a leather and metal
 25 paneled wood framed pocket door.

1 Deiss

2 Q. Yes. And the concept for the metal,
3 or the door with the leather panel with the metal
4 frame around it, was that presented by Voronchenko
5 or you presented it to him?

6 A. We presented it to him.

7 Q. He didn't say, he didn't come to you
8 and say, "Look, this is the type of door I want"?

9 A. No.

10 Q. Okay. Now, when you filed your
11 copyright protection for your drawings, you
12 claimed them to be original works, correct?

13 A. Correct.

14 Q. You did not in any way reference that
15 it was derivative of Mr. Hayden or anybody else,
16 correct?

17 A. Correct. I mean, I think so. That's
18 the way the filing was done. I don't know the
19 technicalities of it.

20 Q. Well, who took responsibility for the
21 filing, you or your partner?

22 A. Our attorney.

23 Q. Okay. On your end, I'm sure you hired
24 an attorney to do it.

25 A. My partner.

1 Deiss

2 know.

3 Q. When the expediter went and obtained
4 these, did he also get a set of what we've marked
5 as Exhibit 1? Did he bring back the original
6 plans?

7 A. No.

8 Q. Had you in any way limited the
9 expediter's --

10 A. No.

11 Q. -- investigation?

12 A. I had not.

13 Q. When you got these back from the
14 expediter, did you look at them?

15 A. Yes, I did.

16 Q. Was that the first time you had ever
17 seen these?

18 A. Yes.

19 Q. When, approximately, did that happen?
20 Sometime in 2011, correct?

21 A. Yes, I think so.

22 Q. Okay.

23 A. I don't remember exactly when it was.

24 Q. Well, about how long after you saw
25 these was it that you directed your attorney to

1 Deiss

2 Q. Okay. Was that done through Zetlin's
3 office?

4 A. Yes.

5 MR. McKEE: I need to mark this.

6 EXH (Defendant Exhibit 8, five-page
7 document entitled, "Amended Plan," with DOB
8 stamp, marked for identification, as of this
9 date.)

10 Q. Ms. Deiss --

11 A. Yes.

12 Q. -- I'm going to show you what we've
13 marked today as Exhibit 8. I think it's five
14 sheets. Maybe it's six. Five sheets noted as an
15 amended plan. Again, it has one of these
16 perforated stamps from the DOB, and there should
17 be an approved stamp, I think, but it has a stamp
18 from the plan examiner of August 10, 2009; do you
19 agree with that?

20 A. I do.

21 Q. When you sent your expediter to the
22 DOB, is this the set of plans he returned with?

23 A. Yes, it is.

24 Q. Did he come back with all five sheets?

25 A. I don't know. I don't -- I don't

1 Deiss

2 file the -- well, when did you direct your
3 attorney to register your copyright?

4 A. I don't remember. But I can tell you
5 that it was in conjunction with Tempora Mobili,
6 and the information I received from them.

7 Q. Yes, I think you already explained
8 that you had gone there and they told you that
9 they were operating off of your plans and that it
10 was as a result of that that you told the
11 expediter to go to the DOB?

12 A. Yes, he went there a second time.

13 Q. You went where a second time?

14 A. To see Tempora Mobili.

15 Q. How long after the first time?

16 A. Six months. Four or five months, six
17 months.

18 Q. Okay. The first time you went there,
19 what specifically was your reason for going there?

20 A. The first time I went?

21 Q. Yes.

22 A. To see if they were actually using our
23 drawings to fabricate pieces of the apartment.

24 Q. And I'm sorry if I asked you this
25 already, but why did you suspect that they were

1 Deiss
 2 using your plans to fabricate anything for the
 3 apartment?
 4 A. Because they had insisted very much on
 5 getting our drawings throughout the entire
 6 process. And because I knew from Mr. Voronchenko
 7 and Garry and -- that they were using them to
 8 build the apartment.
 9 Q. But how did you know?
 10 A. I didn't know for sure. I went to
 11 see.
 12 Q. See, that's what I'm -- I'm just
 13 trying to clarify it. You suspected that they
 14 were using your drawings?
 15 A. Yes.
 16 Q. Okay. So nobody had initially told
 17 that you they were using your drawings. You
 18 suspected it.
 19 A. I suspected it.
 20 Q. Okay. When you went to Mobili, was it
 21 based upon a suspicion that they were using your
 22 drawings?
 23 A. Yes, it was.
 24 Q. Okay. Why did you go to Mobili? Out
 25 of any other place, why would you go to Mobili?

1 Deiss
 2 A. Because I had a contact with them. We
 3 had probably sent them drawings. They -- I was
 4 pretty sure that Mr. Voronchenko was using them to
 5 fabricate the apartment because that's what he was
 6 always expressing he would do. And because it was
 7 in the neighborhood.
 8 Q. So you went there on a hunch, more or
 9 less?
 10 A. What is a hunch?
 11 Q. A suspicion.
 12 A. Yes.
 13 Q. And then they showed you shop drawings
 14 at that time.
 15 A. Yes, they did.
 16 Q. And they told you it was based upon
 17 drawings that had the name Triarch on them.
 18 A. Yes.
 19 Q. But they never gave you a copy of
 20 those.
 21 A. No.
 22 Q. And then six months later, you were
 23 back in the area.
 24 A. About six months. I don't know
 25 exactly how much later.

1 Deiss
 2 Q. Okay. And you went back to Mobili?
 3 A. Yes, I did.
 4 Q. And you went back there on the
 5 suspicion that they were still manufacturing or
 6 fabricating for this project?
 7 A. Yes.
 8 Q. Okay. And what led you to suspect
 9 that they were still fabricating based upon your
 10 plans?
 11 A. The same reason that we had before,
 12 that I had before to go and see them. I wanted to
 13 have more proof.
 14 Q. Okay. Had you heard from somebody
 15 that the project was progressing based upon plans
 16 prepared by Triarch?
 17 A. No.
 18 Q. So you hadn't spoken to anybody who
 19 might have a connection with either
 20 Mr. Voronchenko or Medallion?
 21 A. No.
 22 Q. It was just a suspicion.
 23 A. Yes.
 24 Q. Okay. Now, so was it between the
 25 first visit and the second visit that you had your

1 Deiss
 2 expediter go get a copy of these plans?
 3 A. I'm not sure. It can have happened
 4 after the second visit. I would have to check the
 5 dates.
 6 Q. How long after you received these
 7 plans, which we've marked as Exhibit 8, was it
 8 before the federal complaint was filed?
 9 A. I don't know.
 10 Q. Can you estimate for me? Was it more
 11 than or less than six months?
 12 A. I don't know. I can't even estimate.
 13 Q. That's fine. Okay. So when you got
 14 these plans, what did you do?
 15 A. I compared them to our plans.
 16 Q. Okay. Now, we're going to compare
 17 sheet E-1 of Exhibit 8 to sheet D-1, Exhibit 7,
 18 which is your demolition plan. What I'd like you
 19 to do is show me any and all instances where you
 20 feel that this sheet on Exhibit 8 is somehow
 21 infringing upon your copyrighted drawing, D-1.
 22 A. I can tell you right away there's not
 23 much on this plan. It's in the elevations. But
 24 this is basically the same plan we looked at
 25 before.

1 Deiss
 2 Q. The demolition plan?
 3 A. Yes. This has not been -- this has
 4 not changed.
 5 Q. So as you --
 6 A. Actually, no. What am I -- yeah.
 7 This has changed over here (indicating). Let me
 8 see -- no, I -- no, it's the same. Yeah, this is
 9 basically the same plan that he filed before.
 10 Q. Okay. Now, one thing before we move
 11 off this sheet. His demo plan, "His" being Garth
 12 Hayden, the living room, it says, "Remove
 13 fireplace box, mantle, hearth," etc. You don't
 14 make any reference on your plan.
 15 A. Okay.
 16 Q. Okay. But was that the intent --
 17 A. Yes, it was -- no, what -- can you --
 18 Q. I'll repeat the question. All right.
 19 When you were working for Medallion and
 20 Mr. Voronchenko, was it the intent to, in effect,
 21 remove the preexisting fireplace?
 22 A. Yes, it was.
 23 Q. We're now going to go to sheet A-1 of
 24 your drawings and I'm going to lay out sheet A-2
 25 from Exhibit 8. And I will turn it this time.

1 Deiss
 2 Now, looking at -- well, first of all,
 3 would you agree with me that this is basically an
 4 overall floor plan for the apartment?
 5 A. Yes, it is.
 6 Q. Okay. Now, if you could, would you
 7 look at this sheet A-2.
 8 A. Um-hum.
 9 Q. Do you feel that there are
 10 infringements of your work which are up here on
 11 this particular page?
 12 A. Yes, I do.
 13 Q. Okay. I need you to identify each and
 14 every one of them.
 15 A. Okay. Let's start with the bottom
 16 part here.
 17 Q. When you say "bottom," you're talking
 18 about towards the --
 19 A. Toward the bedroom area, master
 20 bedroom area.
 21 Q. Okay.
 22 A. The position of the door has been
 23 changed from his drawings to be in the same
 24 position that we have.
 25 Q. So the entry into the master bedroom.

1 Deiss
 2 A. The closet configuration and entrance
 3 to the bathroom has been moved to the same
 4 position that we have in our drawings.
 5 Q. Well, when you say "same," what do you
 6 mean?
 7 A. It was -- it was in a different
 8 position before. And he changed it to match our
 9 drawings.
 10 Q. Are you saying that the closets and
 11 the door opening to the bathroom are now identical
 12 to what you drew?
 13 A. They are not identical but they are in
 14 the same position.
 15 Q. Yes.
 16 A. He had created soffits in the bedroom
 17 in the same way that we have them in our plan.
 18 Q. Well, let me ask you here, when you
 19 say in the same way you have them there, are you
 20 saying --
 21 A. In the same location that we have them
 22 in our bedroom.
 23 Q. Is the soffit the same as what you had
 24 or is it just calling out for a soffit?
 25 A. It's not dimensioned. So in order to

1 Deiss
 2 respond to your question I would have to have an
 3 architecture scale and measure. It looks to be
 4 the same.
 5 The division of the closets and the --
 6 the change in material on both sides is the same
 7 as we have in our drawings.
 8 Q. What material, what does it say?
 9 A. Over here. If you look at his other
 10 drawing, we actually have something happening here
 11 in the wall.
 12 Q. When you say "something happening"
 13 there --
 14 A. A wall built.
 15 Q. So there's a framed opening from the
 16 hallway into the master bedroom?
 17 A. No, it's within the closet area over
 18 here. If we look at his previous drawing, he
 19 doesn't have that.
 20 Q. Doesn't have a --
 21 A. No, that's not in the same location,
 22 and it's just a closet wall. This is a partition.
 23 This is a partition.
 24 Q. It's a heavier divider? Well, what
 25 does this mean here, these narrower lines --

1 Deiss
 2 A. Nothing --
 3 Q. -- let me complete the question. The
 4 original drawings, sheet A-2 in this wall of
 5 closets here for the master bedroom, there's a --
 6 looks like a narrower line than what's shown on
 7 his amended plan between the two longer closets.
 8 That's the distinction? Yes?
 9 A. It's a difference of division of the
 10 doors themselves, and of the closet space itself.
 11 Q. Okay.
 12 A. At the same time, he -- we have our
 13 closets all along one wall.
 14 Q. Yes.
 15 A. And keep these separate. He changed
 16 it to our configuration and kept this separate
 17 again.
 18 Q. So he changed the deeper closets to
 19 more -- to more reflect what we see for more,
 20 similar to what we see in yours, correct?
 21 A. Correct.
 22 Q. Okay.
 23 A. For the same -- actually, not more.
 24 It's the same.
 25 Q. Okay. What else?

1 Deiss
 2 A. The soffit in the living room is the
 3 same soffit that we have in our living room.
 4 Q. I'm curious how you can tell from this
 5 drawing that it's the same, other than
 6 acknowledging that he does call for a soffit.
 7 A. Let's acknowledge that he's calling
 8 for a soffit.
 9 Q. Okay. And the reason I ask is, if you
 10 can direct me to how it's the same, I'm happy to
 11 hear it.
 12 A. I can't -- the scale here, but it's
 13 this compared to this.
 14 Q. What's this, what is this --
 15 A. He has a double soffit. He has a
 16 soffit with lighting in it, and the same way we
 17 have it, which is reflected in another detail.
 18 Q. Yes.
 19 A. And then he has a second soffit here.
 20 Q. Do you have a double soffit?
 21 A. No, I have a single soffit with
 22 lighting in it.
 23 Q. You called it a simple soffit or a
 24 single soffit?
 25 A. Single.

1 Deiss
 2 Q. Single. Thank you. And then we have
 3 a soffit, I think you said, in the dining room?
 4 A. Yes.
 5 Q. And can you tell by this depiction on
 6 these two sheets if there's, what, if any,
 7 difference there is between the soffits?
 8 A. Between our soffit and his soffit?
 9 Q. Yes.
 10 A. Hard to tell.
 11 Q. Okay. Anything else?
 12 A. I think that's pretty much it for the
 13 floor plan.
 14 Q. Okay. Sheet A-3 of Hayden's amended
 15 plan, it has a reflected ceiling plan and soffit
 16 detail.
 17 So if you could go to whatever portion
 18 of your drawings reflect the reflected ceiling
 19 plan, we're on sheet A-2?
 20 A. Yes.
 21 Q. Okay. I'll put that in the proper
 22 position. Now, other than the fact that Hayden's
 23 plans now show soffits and, as you noted, the
 24 living room shows a double soffit, can you tell me
 25 what are the similarities between your reflected

1 Deiss
 2 ceiling plan and my client's?
 3 Now, you just pointed to the foyer.
 4 A. There is a round --
 5 Q. Circular?
 6 A. -- sorry, circular recessed ceiling in
 7 the foyer.
 8 Q. Okay. Now, is your detail egg-shaped
 9 or oval?
 10 A. No, it's round.
 11 Q. Is it round? Okay. And now, in
 12 comparing these to what you've called similar
 13 conditions, would you agree with me that the
 14 depiction on Hayden's plan shows a couple of
 15 different levels?
 16 A. In the soffits?
 17 Q. For the foyer. That circular detail.
 18 A. It has two different levels, yes.
 19 Q. What's your understanding, if any, of
 20 what that detail in the center of his ceiling
 21 detail is for that?
 22 A. I have no idea.
 23 Q. Okay. So what other similarities, if
 24 any, do you see between these two reflected
 25 ceiling plans?

1 Deiss
 2 A. Nothing except that this looks like
 3 it's from the previous drawing, not from this
 4 drawing. This is --
 5 Q. You're saying that partition between
 6 the foyer --
 7 A. This part of the partition, because in
 8 the plan, he has a shower here, and here -- I
 9 don't know.
 10 Q. Okay. But that has nothing --
 11 A. That has nothing to do --
 12 Q. -- nothing to do --
 13 A. No.
 14 Q. -- with the issue of whether there are
 15 similarities between the plans.
 16 A. No.
 17 Q. Okay. Sheet 4, A-4 of my client's
 18 amended set of plans, which has master bedroom and
 19 library elevations.
 20 A. I have them on separate sheets.
 21 Q. Which one do you want?
 22 A. Bedroom.
 23 MR. MANDEL: Which one is that one?
 24 MR. McKEE: A-4.
 25 Q. Now, at the top of A-4 we see some

1 Deiss
 2 master bedroom elevation, right?
 3 A. Correct.
 4 Q. Tell me, what were the similarities
 5 between the two?
 6 A. Okay. Here, this elevation, which is
 7 this elevation here (indicating), has -- I mean,
 8 they even just copied my grills. My architectural
 9 grills. This is the, basically the same elevation
 10 as what we have here.
 11 Q. All right. When you say
 12 "architectural grills," on your drawing, on the
 13 panel all the way to your right, as you look at
 14 the north elevation, there's a -- what kind of
 15 pattern would you call those grills?
 16 A. Concentric.
 17 Q. Concentric. Okay. Now, are you
 18 saying that what we see on Hayden's plans here are
 19 concentric?
 20 A. Yes, I would say that.
 21 Q. They are -- "bronze AC grill." So
 22 it's a black square with a hole in the middle.
 23 A. Well, it's because the drawing didn't
 24 print properly.
 25 Q. I see.

1 Deiss
 2 A. If it was printed in a bigger scale it
 3 would look the same way.
 4 Q. I see. And when you say "copied," you
 5 mean literally it's your allegation that my
 6 clients sat down and copied right off of your
 7 drawing as shown on A-12 and included it on here?
 8 A. I would say so.
 9 Q. Do you have any firsthand knowledge as
 10 to how it is that my client came to include any of
 11 the details that he did in his amended plans? Do
 12 you know what he was provided?
 13 A. No, I don't know. It just looks like
 14 our drawings. That's all I can base myself on.
 15 Q. Okay. So he has two grills on that
 16 end panel. What else?
 17 A. He has fabric panels with nails in
 18 them.
 19 Q. Okay have you ever done any other
 20 apartments where you have fabric panels with nails
 21 in them?
 22 A. Yes, but it doesn't necessarily look
 23 like what anybody else did.
 24 Q. Is it color-specified?
 25 A. No, it's not. But these are

1 Deiss
 2 black-and-white drawings.
 3 Q. No, I'm not saying does the drawing
 4 depict the color. I'm saying, does it specify the
 5 color?
 6 A. No, it doesn't. He has a wood panel
 7 here. He has mirrored doors here, one, two,
 8 three, four, one, to --
 9 Q. On the closet doors?
 10 A. Yes. And he has wood in the back.
 11 Q. You've done other closet doors with
 12 mirrors on them, have you not?
 13 A. I have. But not the same that
 14 somebody else has for the same drawing.
 15 Q. I see. So if a client says, "I want
 16 fabric covers on part of my closet doors and I
 17 want some mirrors here so I can see what I look
 18 like when I dress," would you consider that to be
 19 an unusual request?
 20 A. No.
 21 Q. What else do you feel is a -- what's
 22 this detail here?
 23 A. That's an open cabinet.
 24 Q. What do you mean it's an open cabinet?
 25 It's open cubbies?

1 Deiss
 2 A. Yes, open cubbies. He just has a
 3 straight wall there with the same wood on it. He
 4 doesn't have the open cubbies.
 5 Q. He doesn't have the cubbies?
 6 A. No, he just goes right over them. But
 7 I mean the doors are the same.
 8 Q. And --
 9 A. Including the entrance door.
 10 Q. The entrance door being that it's
 11 wood?
 12 A. Yes.
 13 Q. Okay. And isn't wood the most typical
 14 type of door?
 15 A. It is. But you can also have a
 16 painted door. It depends how you treat the rest
 17 of the space.
 18 Q. So if he had -- if he had a wood door
 19 there but he said, "Painted wood door," that would
 20 be a distinction?
 21 A. Yes, it would be.
 22 Q. I see. All right. So if the owner
 23 said, "I don't want a painted door, I want a wood
 24 door with a lacquer finish," would you think that
 25 that was unusual?

1 Deiss
 2 A. Does he have a wood door with a
 3 lacquer finish?
 4 Q. "Wood face lacquer finish, beige."
 5 A. Then it's different from our door.
 6 Q. Sticking with the master bedroom, what
 7 other similarities?
 8 A. Do you mind if I turn it so I can --
 9 Q. Of course.
 10 (Witness perusing chart.)
 11 A. Yes, we're going to this part here.
 12 Q. And which elevation is that? South
 13 elevation?
 14 A. Two little closet doors, two little
 15 closet doors. Same over here. What he has
 16 different is the double door into the bathroom.
 17 We have a single door. Here and there.
 18 Q. Now, so the double doors span the
 19 entire distance between the two closets, correct?
 20 A. In his -- in his drawing, yes. They
 21 do. And we just have a single door.
 22 Q. And you have sconces and wall space on
 23 the other side, correct?
 24 A. Yes.
 25 Q. What are these objects here?

1 Deiss
 2 A. Furniture.
 3 Q. Furniture in that blank area of wall?
 4 A. Yes, but I mean, this is not a
 5 construction -- it's just a drawing.
 6 Q. Yes, to show what the space can be
 7 used for.
 8 A. Exactly.
 9 Q. Yes. Do the doors on either side of
 10 your bathroom entry, do they call for bronze base
 11 trim?
 12 A. Yes.
 13 Q. And have you ever used bronze base
 14 trim on any other project?
 15 A. No.
 16 Q. So that was something you --
 17 A. You don't usually use that in
 18 projects.
 19 Q. Okay. So was that something unique
 20 that Mr. Voronchenko was looking for?
 21 A. Well, it's something that he liked
 22 that we started using in other rooms in the
 23 library, for example, and in the foyer.
 24 Q. So if the client says, "I want bronze
 25 base trim there," would you say that that means

1 Deiss
 2 that my client sat down and literally copied off
 3 your plans?
 4 MR. MANDEL: Objection.
 5 A. How does he get to bronze trim?
 6 Excuse me.
 7 Q. If a client tells him, "I want bronze
 8 trim on the base" -- I'll pose you a different
 9 question. If you were working for Mr. Voronchenko
 10 and he said -- as you did -- and he says, "You
 11 know what? I want bronze trim under those doors,"
 12 would you put that in your detail?
 13 MR. MANDEL: Objection.
 14 Mischaracterizes prior testimony and calls
 15 for speculation.
 16 MR. ISRAEL: That's what she said.
 17 MR. MANDEL: She did not ever say he
 18 requested bronze doors. Ask if he
 19 requested. Maybe he did, but that's not
 20 what she testified.
 21 A. No, I said that it's something he
 22 liked.
 23 Q. He liked. So now, if were working for
 24 Mr. Voronchenko, as you were, or did, and he said,
 25 "I would like bronze trim under these doors," you

1 Deiss
 2 would include it, wouldn't you?
 3 MR. MANDEL: Same objection.
 4 A. Maybe.
 5 Q. All right. What other aspects of the
 6 master bedroom do you feel are copied directly off
 7 your plans?
 8 A. If I tell you about the finishes, you
 9 know, the lacquer finish at the wood trims around
 10 the bedroom?
 11 Q. Now, in some of the depictions that we
 12 saw, some of the computer-generated depictions,
 13 the bedroom looked white. A lot of them, the
 14 master bedroom had a lot of white in it.
 15 A. Um-hum. It's not white, it's like a
 16 light gray.
 17 Q. Light gray.
 18 A. Yes.
 19 Q. Those computer-generated images of the
 20 master bedroom, were they generated before or
 21 after these plans were prepared?
 22 A. During.
 23 Q. During. But you needed the dimensions
 24 right. So, you didn't have the dimensions set, so
 25 you had this set of plans issued, correct?

1 Deiss
 2 A. Can you repeat the question?
 3 Q. Sure. You needed the dimensions for
 4 the rooms?
 5 A. Yes, I do.
 6 Q. In order to do the computer-generated
 7 images, correct?
 8 A. Correct.
 9 Q. And these were not issued as a
 10 preliminary set until December 23rd, correct?
 11 A. We issued them many times because they
 12 went through many iterations.
 13 Q. That was during design development,
 14 correct?
 15 A. And we did design development and
 16 construction documents at the same time.
 17 Q. Okay. Now, the depictions we saw
 18 today, computer-generated depictions, images, were
 19 of a -- when you say gray, it looked pretty white,
 20 a lot of the --
 21 A. Pretty light gray, yes.
 22 Q. Did those depictions show lacquered
 23 wood finish?
 24 A. Yes, they did.
 25 Q. And that was something that

1 Deiss
 2 Mr. Voronchenko apparently liked?
 3 A. That was something that he liked.
 4 Q. Okay. 'Cause we also saw you had some
 5 more brownish --
 6 A. That's what it was, what he did not
 7 like.
 8 Q. And you also had the thing with the
 9 leaf, right?
 10 A. Wallpaper.
 11 Q. He didn't like that, either, did he?
 12 A. No.
 13 Q. Okay. And after any number of
 14 iterations, he decided that he liked this light,
 15 clean look, correct?
 16 A. I'm not sure, because he seemed to
 17 like it. But then he left and disappeared with
 18 our drawings, so in the end I do not know.
 19 Q. Well, when you had your presentation,
 20 and you gave him that book, and you walked around
 21 and showed it to him, the depiction of the master
 22 bedroom was in that rather light color.
 23 A. Yes.
 24 Q. And you said he was pleased.
 25 A. Yes.

1 Deiss
 2 Q. So are you surprised that when he had
 3 Garth Hayden prepare revised drawings, he said,
 4 "This is how I want my master bedroom to look"?
 5 MR. MANDEL: Objection, calls for
 6 speculation, assumes facts not in evidence.
 7 You can answer.
 8 A. No, I don't hear -- ever had any
 9 conversation with Garth Hayden about his master
 10 bedroom.
 11 Q. Since you said it, what do you base
 12 that on?
 13 MR. MANDEL: Objection, same
 14 objection.
 15 You may answer.
 16 A. These are not drawings that are
 17 prepared. These drawings are not drawings that
 18 you prepare for a client or because a client has
 19 that desire. These are very basic building
 20 department filing drawings.
 21 Q. Yes. And what's the purpose of
 22 building department filing drawings, as you've
 23 used that term?
 24 A. To get them approved by the building
 25 department.

Deiss

- 1
2 Q. And the purpose of that is what, so
3 you can move forward and build?
4 A. Yes.
5 Q. Okay. So why wouldn't they be
6 sufficient for a client?
7 A. For a client like Mr. Voronchenko,
8 they would not be sufficient because he needs to
9 be able to visualize what he wants to have.
10 Q. Do you have any knowledge or
11 understanding of what Libracon was providing to
12 Mr. Voronchenko after your termination?
13 A. No.
14 Q. How about Pepe Calderan, any notion or
15 idea what Mr. Pepe Calderan is providing?
16 A. I saw drawings of his recently. They
17 were provided to us through, I think, you.
18 Q. Okay. All right. Library elevations.
19 Would you go to the library. Okay. Now, in this
20 depiction, Mr. Hayden shows four elevations, as
21 you do, correct?
22 A. Correct.
23 Q. And you have a floor plan, correct?
24 A. Yes. Correct.
25 Q. Now, if you look at his, the

Deiss

- 1
2 Q. How about the door, did Voronchenko,
3 was there discussion about different looks for
4 that door into the library?
5 A. I think we went through different
6 designs, but it was always very similar to this.
7 Q. And what's this?
8 A. This one is the elevation that you see
9 here (indicating), which is the exact same one,
10 basically, to the -- at the east side of the
11 library. You see the recessed ceiling, you see
12 the vault, the soffit, the door, the door handle,
13 the bronze trim, and the division of the panels.
14 It's the exact same thing.
15 Q. And these would be the bookcases down
16 the side?
17 A. Yes.
18 Q. Now, the space laid out for that area,
19 that called for a door to be in that position,
20 correct?
21 A. Yes.
22 Q. So the fact that there's a door in
23 that location doesn't make it unique, does it?
24 A. No. But the way you divide up the
25 panels and run the trim around and set up the

Deiss

- 1
2 elevation, which I guess is south, which looks
3 toward the bookcases, you'd agree with me that he
4 has five spaces instead of your six, correct?
5 A. Hum.
6 Q. Yes?
7 A. Yes.
8 Q. Now, when you went to Mobili, did you
9 see the overall scope of the work that they were
10 making, the bookcases that they were making?
11 A. No, I saw the vault that they were
12 making, the ceiling vault. No. And they pointed
13 out to the ceiling vault and said, "There is the
14 library ceiling vault."
15 Q. Yes. And that ceiling vault,
16 Voronchenko, that's something he wanted?
17 A. That's something he -- yes, he wanted
18 it. We showed it to him and he liked it and he
19 wanted it.
20 Q. Through all the iterations that you
21 went through with Voronchenko, did he ever change
22 his mind about the ceiling vault?
23 A. He never did.
24 Q. He always wanted that?
25 A. He always wanted that.

Deiss

- 1
2 soffit with the vault, yes.
3 Q. And Palisander, again, is a type of
4 wood?
5 A. Yes.
6 Q. Now, here it says, "Wood panel." Does
7 it say Palisander?
8 A. You may not see "Palisander," but
9 Palisander is everywhere. It's in the drawings,
10 and when we have rendering -- Palisander is on the
11 renderings.
12 Q. It was Mr. Voronchenko who said he
13 wanted Palisander, right?
14 A. Right.
15 Q. In fact, do you recall getting an
16 e-mail from him or Braverman saying that he wanted
17 Palisander?
18 A. I don't remember the e-mail
19 specifically, but I remember the Palisander.
20 Q. So the fact that details in this
21 library or elsewhere in his home called for
22 Palisander wood, if the plans were drawn by you or
23 some other architect, that doesn't surprise you,
24 does it?
25 MR. MANDEL: Objection.

1 Deiss
 2 You may answer.
 3 A. No, doesn't surprise me. The thing
 4 that is -- okay.
 5 Q. You were going to say?
 6 A. Well, he likes Palisander cast in a
 7 certain way, at an angle. We don't like that and
 8 have not represented it that way. So it's the way
 9 you work it also that makes a difference.
 10 Q. Does this depiction, does the
 11 depiction here specify how it's to be cut?
 12 A. No, it was just a side note.
 13 Q. Is there a side note on here regarding
 14 how the Palisander is to be cut?
 15 A. No, it was something that I just said.
 16 It's not on the drawings.
 17 Q. So the fact that Voronchenko wanted
 18 Palisander in his library is not different than
 19 somebody specifying cherry or oak or anything
 20 else, right? That was his personal taste.
 21 Correct?
 22 MR. MANDEL: Objection.
 23 You may answer.
 24 A. That type of wood is what he likes,
 25 yes.

1 Deiss
 2 Q. I see. Now, the presence of soffits
 3 in the structure, that's not an unusual detail, is
 4 it, in your experience?
 5 A. No.
 6 Q. And on a high-end residential property
 7 like this, the inclusion of panels dividing the
 8 walls up into fabric or wooden panels, that's not
 9 unusual, is it?
 10 A. No.
 11 Q. And a client having specific tastes
 12 for colors or textures, that's not unusual, is it?
 13 A. No.
 14 Q. Or unique, is it?
 15 A. No. I would say so that the vaulted
 16 ceiling, a vault in a library is very unusual.
 17 Q. That kind of barrel vault?
 18 A. Yes.
 19 Q. What makes that unusual?
 20 A. It's -- it's an unusual feature in a
 21 Park Avenue apartment. You don't want to
 22 necessarily build a vault in rooms.
 23 Q. Is it unusual for a Russian of
 24 substantial means?
 25 A. Yes.

1 Deiss
 2 Q. Now, as we sit here today, other than
 3 your comparison, looking at my client's drawings
 4 and looking at portions of your drawings, do you
 5 have anything which supports your allegation that
 6 my client literally copied your work?
 7 MR. MANDEL: Objection.
 8 You may answer.
 9 A. Looking at the elevations and some
 10 portions of the plan, it is obvious to me that
 11 they have been taken off our drawing. They
 12 compare piece by piece.
 13 This is a very unusual design and it's
 14 not coming up by accident in somebody else's
 15 drawing.
 16 Q. But this is for the same project,
 17 correct?
 18 A. Yes.
 19 Q. For the same client.
 20 A. Um-hum.
 21 Q. Yes?
 22 A. Yes.
 23 Q. It's not like these details are
 24 showing up on some other project elsewhere on Park
 25 Avenue, correct?

1 Deiss
 2 A. No.
 3 Q. Do you claim that your idea -- well,
 4 who came up with the idea for the vault?
 5 A. Stephen Corelli.
 6 Q. Do you claim that there's something so
 7 unique about a vaulted ceiling that it can never
 8 appear anywhere else in the City of New York on
 9 another library?
 10 MR. MANDEL: Objection, calls for a
 11 legal conclusion.
 12 But you can answer.
 13 A. I have no answer to that.
 14 Q. How about the use of soffits, whether
 15 it's a single soffit or double soffit, do you
 16 claim that the use of a soffit is such a unique
 17 idea -- let me -- once you put it into a drawing,
 18 that if anybody else uses a soffit, that they
 19 somehow are copying your drawings?
 20 MR. MANDEL: Objection.
 21 You may answer.
 22 A. No, I don't find that unusual.
 23 Q. And if the client wants a detail
 24 included in the foyer ceiling, is that so unique,
 25 having a circular recess, that you would claim

1 Deiss
 2 some kind of copyright protection because it has
 3 been reduced to a drawing one time, in one set of
 4 drawings by you?
 5 MR. MANDEL: Objection, calls for a
 6 legal conclusion.
 7 But you may answer.
 8 A. It is unusual that a client has this
 9 kind of request, yes.
 10 Q. So if somebody else on another
 11 apartment on Park Avenue, or maybe in the same
 12 building, decides to expand their foyer to
 13 resemble whatever Mr. Voronchenko was doing here,
 14 and decides to include a circular recess in the
 15 foyer, would you claim that that was an
 16 infringement of your design?
 17 MR. MANDEL: Objection, calls for a
 18 legal conclusion.
 19 A. I'm not going to answer.
 20 Q. I would ask you to answer. Do you
 21 have an answer?
 22 A. No.
 23 Q. You have no answer to that?
 24 A. No.
 25 Q. So are you claiming copyright

1 Deiss
 2 protection against any other apartment in the
 3 building, including that kind of detail, because
 4 you've taken it and once put it on a drawing?
 5 MR. MANDEL: Objection, calls for a
 6 legal conclusion.
 7 You may answer.
 8 A. No comment.
 9 MR. MANDEL: Mr. Israel, for the
 10 record, am I correct, Mr. Israel, you're
 11 leaving?
 12 MR. ISRAEL: I'm going to court to see
 13 Judge Kaplan.
 14 MR. MANDEL: You're leaving to go to
 15 court --
 16 MR. ISRAEL: To see Judge Kaplan. I
 17 welcome you to call him to tell him it
 18 wasn't necessary for me to come to his court
 19 on a preliminary injunction matter, but you
 20 seem not to be interested in calling the
 21 judge and telling him how much more
 22 important your deposition is, so I'm ordered
 23 to go to court.
 24 MR. MANDEL: And your colleague,
 25 Ms. --

1 Deiss
 2 MS. ZLOTNIKOVA: Eleonora Zlotnikova.
 3 MR. ISRAEL: An unlicensed lawyer.
 4 Her admission is pending. She's going to
 5 sit here and take notes, that's right.
 6 MR. MANDEL: And we'll see you back
 7 here in about an hour, Mr. Israel?
 8 MR. ISRAEL: However long the court
 9 takes. But I understand Mr. McKee may be
 10 closing his doors at a certain time.
 11 MR. MANDEL: Before you leave, why
 12 don't we just --
 13 MR. ISRAEL: I'll come back here.
 14 MR. MANDEL: You're coming back here
 15 so we'll wait for you --
 16 MR. ISRAEL: I suspect it won't be
 17 past 5:30. I'm sure your client will still
 18 be here at 5:30 because I'd like to ask her
 19 questions today.
 20 Will you still be here at 5:30?
 21 Okay. I'm going. See you later.
 22 MR. McKEE: This would be a good time
 23 to take a break.
 24 MR. MANDEL: Yes, we've been going
 25 about two hours. I would like a break.

1 Deiss
 2 (Recess taken.)
 3 (Mr. Israel is not present.)
 4 MR. McKEE: Let's mark this set.
 5 EXH (Defendant Exhibit 9, collection of
 6 various drawings, marked for identification,
 7 as of this date.)
 8 EXAMINATION (Cont'd.)
 9 BY MR. McKEE:
 10 Q. Ms. Deiss, I'm going to hand you a
 11 collection of drawings which were produced by your
 12 prior counsel.
 13 A. Um-hum.
 14 Q. They are grouped in this fashion
 15 because this is a series of various drawings of
 16 the project of various dates. But they all have
 17 some degree of handwriting on them.
 18 A. Um-hum.
 19 Q. The first page is designated sheet A-1
 20 and has a date of January 19, 2008.
 21 A. Um-hum.
 22 Q. Or 16, I'm upside-down. 16.
 23 A. Sixteen.
 24 Q. 2008.
 25 A. Well, that's a mistake.

1 Deiss
 2 Q. That's a mistake.
 3 A. That's a mistake, yeah.
 4 Q. The handwriting on this drawing which
 5 is entitled, "Construction Plan," do you recognize
 6 any of the handwriting?
 7 A. Yeah.
 8 Q. Is any of it yours?
 9 A. No.
 10 Q. Okay. Whose handwriting is it?
 11 A. I think it's Aaron. Aaron Boucher.
 12 Q. Now, here in the index of changes
 13 area, it says, "Corrected by" --
 14 A. Eric.
 15 Q. -- by Eric?
 16 A. Yeah, he probably picked up the red
 17 lines.
 18 Q. And who is Eric?
 19 A. Eric was somebody working in my
 20 office. He worked on the project.
 21 Q. Okay, was he an architect?
 22 A. Yes.
 23 Q. Is he still with you?
 24 A. Sorry?
 25 Q. I'm sorry, is he still with you?

1 Deiss
 2 A. No. He's on the West Coast working.
 3 Q. And his last name was what?
 4 A. Olsen.
 5 Q. Olsen?
 6 A. Yes.
 7 Q. O-l-s-e-n?
 8 A. Yeah.
 9 Q. So the notation there, the handwriting
 10 to me looks different than the notes on here.
 11 A. Yeah.
 12 Q. It was written by two people?
 13 A. Yeah, this has been redlined by Aaron
 14 Boucher.
 15 Q. So you're pointing, the writing on the
 16 plan itself, on the layout of the floor, that's by
 17 Aaron Boucher?
 18 A. Yes.
 19 Q. And then the note on the side says,
 20 "Corrected by Eric"?
 21 A. Yes, because we -- we -- yeah.
 22 Q. So the markings by Aaron, that would
 23 be the red line.
 24 A. Yes. This would be done in red,
 25 correcting the drawings. And Eric would pick up

1 Deiss
 2 the red lines on the computer.
 3 Q. I see. Now, the date there, 1/5/06,
 4 what is the date there? Can you read that?
 5 A. 1/5/08. I don't know.
 6 Q. '08?
 7 A. It can't be 1/5/08.
 8 Q. You were still working on this project
 9 in January of 2009.
 10 A. Yes.
 11 Q. Now, you presented today with a set of
 12 plans identified as "Preliminary Issue Set
 13 December 23rd, 2008."
 14 A. Yes.
 15 Q. Your file, your registration of your
 16 copyright, references original works created in
 17 2009.
 18 Is there a subsequent set of, as you
 19 phrase them, construction documents? Something
 20 that came after the set we marked today?
 21 A. Uh -- that's what I wasn't sure about.
 22 There might be another one, yes.
 23 Q. Okay.
 24 A. Probably.
 25 Q. Because that I don't have, and I

1 Deiss
 2 haven't seen it.
 3 A. I'll get it to you.
 4 Q. If it exists. If there's a 2009 set.
 5 A. I actually thought that what we had
 6 printed was the most recent one, but if there are
 7 other drawings that are not -- I guess it isn't.
 8 Q. Looking again at another sheet, A-1,
 9 second in this collection, again, there's some
 10 notations on the drawing itself. That would be,
 11 Aaron did those?
 12 A. Yes.
 13 Q. And the handwritten up here --
 14 A. "Corrected, Eric," yes.
 15 Q. And again it has, 1/5, looks like
 16 "'08/'09"?
 17 A. Eight kind of crossed out, and then
 18 nine.
 19 Q. We're now looking at a third version
 20 of sheet A-1, same kind of notations, same thing,
 21 Aaron made the red lines and then Eric --
 22 A. Picked them up.
 23 Q. Okay. The fourth sheet in is
 24 designated sheet A-2. The handwriting on there
 25 again looks like the same person, that would be